

Islamic Fiqh Academy
(India)

JURISTIC DECISIONS ON SOME CONTEMPORARY ISSUES

قرارات وتوصيات
فقهية معاصرة



*Juristic Decisions
on some
Contemporary Issues*

IFA Publications

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In the name of Allah Most Merciful Most Benevolent

O ye who believe!
Guard your own souls;
If ye follow (right) guidance,
No hurt can come to you
From those who stray.
The return of you
Is to Allah: it is He
That will inform you
Of all that ye do.

Al-Qur'an 5:105



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Foreword

Law and jurisprudence survive only by their dynamism. Warmth and vigour of life is reflected in many living laws. Implementation of law along with the changing pattern of events is certainly a difficult and intricate task. Harmonious correlation of a dynamic law with the changing pattern of time can be achieved only on the basis of certain basic principles and concrete rules of its interpretation. The durability of Islamic jurisprudence, its vitality in giving correct lead and bringing discipline in human life is in fact indebted to the principles deduced and drawn from the Qur'an and *Sunnah* by the jurists who accomplished the delicate task of correlating the rules of Fiqh in every age, in keeping with the prevailing conditions.

Once, there were versatile personalities having deep insight into the Holy Book, *Sunnah* and verdicts of the jurists, principles of analogy (*Al-Qiyas*) and methods of Correlation (*Ijtihad*). They possessed a thorough knowledge of the general principles of Shariah, and its aims and objects. They were fully conversant with the trends, currents and under-currents of the period they lived in. They used their skills with a high degree of piety and strict adherence to the spirit of Shariah and tenets of the religion to find solutions of the problems of their age. Their verdicts got credence and acceptance in the Muslim society over the ages.

The present era has brought multi-dimensional changes in the society. Progress of science and technology has created new horizons. World has shrunk down to the size of a small settlement. New developments in social and economic fields have created new problems and have thrown up new challenges. People, who want to follow Islam and make Shariah the standard guide in all the spheres of life, are confronted with a number of questions for which they seek guidance from theologians. On the other side such competent persons who can solve these problems on the basis of their own knowledge and research and whose verdict may be readily acceptable to the Muslim society, are rare.

It was, therefore, a crying need to lay the foundation of a combined pool of opinions where scholars of religion and theologians could find solutions of problems in the light of, and in conformity with the principles of Shariah.

To achieve this goal, Islamic Fiqh Academy of India was founded, in which renowned scholars and experts of Medical Sciences, Economics, Sociology and Psychology, besides Islamic jurists and theologians were included and it is heartening to note that its echo is reverberating even outside India. This valuable exposition includes the decisions taken in the Fiqhi Seminars organised by the Islamic Fiqh Academy (India) so far. I am confident that our intellectuals will be benefited by it and in future we will constantly receive cooperation of the theologians, jurists and savants in fulfilling our aims and objects.

(Late) Qazi Mujahidul Islam Qasmi
Erstwhile Secretary General
Islamic Fiqh Academy (India)

Preface

It is the responsibility and important obligation of the Islamic theologians (*'Ulemā*) to solve problems and difficulties arising in every age. The masters of the classical age have addressed to the problems of their own time both individually and collectively. However, the latter has been regarded a safer and more appropriate approach in dealing with matters of Shariah. It is because the individual shortcomings could be done away with in a collective wisdom. Therefore, the reverend caliph Umar bin Khattab had followed this during the era of Companions (*Sahaba*) and Imam Abu Hanifa further elaborated upon it in the ensuing age.

There is no doubt that the present age is the age of fast changes. Hence, the experts in Islamic jurisprudence bestowed with acumen and grip on the nature of these changes have established Fiqh academies in various parts of the world. These collective platforms are growingly playing their crucial role in solving the issues and problems coming across in the field of Islamic jurisprudence. The leading divines and towering theologians of India have also taken keen interest to reflect on the contemporary issues and problems although in a limited way. May Allah generously reward late Qazi Mujahidul Islam Qasmi who laid the foundation of Islamic Academy (India) with the cooperation of concerned *'Ulemā* and scholars; and thus created a dynamic platform of the Islamic theologians of the

country to sit together and resolve pressing issues of the time unitedly.

The Academy has successfully endeavored to avail cooperation of almost all leading '*Ulemā* and *Muftis* of the country apart from renowned figures in the field in India and from various countries.

It is a matter of pleasure and satisfaction for us that **19 grand Fiqh Seminars** have been organised so far under the aegis of Islamic Fiqh Academy delving on around **90** issues of contemporary nature. The major decisions of these seminars have been published both in Urdu (*Aham Fiqhi Faisle*) and English '*Important Fiqhi Decisions*'. Later on it was thought pertinent to republish them by arranging text on the basis of themes and subject matter rather than on chronological order so that interested people could have easy access to them.

Consequently, the volume containing major decisions of all the seminars, in a new order, was published in Urdu some time back titled '*Naye Masail aur 'Ulemā-e-Hind ke Faisle*'. The present title '*Juristic Decisions on some Contemporary Issues*' is an endeavour to present various resolutions and decisions of the Fiqh Seminars, held so far, with a subject-wise arrangement of the undertaken issues. It is an updated edition of the previous title '*Important Fiqh Decisions*' brought out in 2001 and 2005. *Insha Allah*, it will be our effort to bring out, as soon as possible, pamphlets dealing with a single problem for wider circulation among common people.

May Allah elevate the status of the founder of Islamic Fiqh Academy late Maulana Mujahidul Islam Qasmi in

the Hereafter and help us to rightly preserve the treasure left by him and to develop it further in the days to come.

Khalid Saifullah Rahmani

General Secretary

28 APRIL 2010

Islamic Fiqh Academy

A. Theoretical Issues

- 1 The View of Shariah on Differences among Various Schools of Islamic Jurisprudence
- 2 Injunctions regarding Feeble *Ahādith*
- 3 Consideration for Want and Necessity in Shariah
- 4 Validity of Customs and Practices in Shariah

1

The View of Shariah on Differences among Various Schools of Islamic Jurisprudence♦

There can be no denial that the interpretation of Shariah in different ages according to principles of the Qur'an, Traditions of the Prophet (peace be upon him), Analogy (*Qiyās*) and Consensus (*Ijma*) have led to inter-school and intra-school differences on several issues. Consequently, some serious doubts have been raised regarding the existence of underlining unity of the Islamic thought and people are at loss to see divergent, contradictory and sometimes diametrically opposed views on the same issue in different schools of Islamic jurisprudence. The matter was thoroughly dealt with in the Twelfth Fiqh Seminar of the Islamic Fiqh Academy and the following decisions were made.

- 1.1 The provisions of guidance in Shariah are of two kinds: *Mansoos* (Specified) and *Ghair Mansoos* (Unspecified). The Specified provisions of Shariah are its those precepts which have been indubitably mentioned in the Qur'an and the *Sunnah* while the Unspecified provisions are ones which are related to the deduction and the Interpretation (*Ijtihad*) of the eminent jurists of the Ummah. Undoubtedly, the

♦ 12th Fiqhi Seminar (Basti) 11-14 February 2000.

authoritative interpretations and deductions of all the Islamic scholars and jurists are indeed a precious treasure for us forming an indispensable part of the Islamic Shariah.

- 1.2 The difference in opinions amongst the Islamic jurists is not merely black or white or that of truth and falsehood, rather a large number of the disputed issues are due to the difference in views with respect to "*Afzal* (Superior), *Ghair Afzal* (Inferior), *Rajih* (Acceptable) and *Ghair Rajih* (Non-Acceptable)." In other issues, the nature of difference is such that one opinion is correct with the apprehension that it may be wrong and the other opinion is wrong with the likelihood of its being correct.
- 1.3 A common man who is ignorant of the Qur'an, the *Sunnah* and the rules of Shariah are required to consult any reliable and authentic religious scholar regarding the viewpoints of Shariah for discharging obligations of the Shariah accordingly.
- 1.4 It is absolutely impermissible to condemn and criticise the different juristic schools or their followers or to refute them straightaway or to make the mockery of their juristic deductions and inferences. It is indeed a cause of enormous misfortune for any Muslim in both the worlds.
- 1.5 Tolerance, respect and regard, the attitude of being considerate towards the place and status of the scholars of different schools of thought and honouring their esteemed works have been the hallmark of the virtuous predecessors, in the matters of any sort of disagreement in viewpoints. These

people have kept the high moral values in mind during academic debates and dialogues. Indeed, the exemplary deportment adopted by the virtuous people has set an illuminating example for all of us. The entire Ummah ought to follow their path and take up a balanced view in case of confrontation.

- 1.6 In the eventuality of the society getting into a serious trouble because of the changing times and circumstances and it seems difficult and troublesome to act upon according to one of the Fiqhi recommendations of one juristic school while the recommendation of another school, in this regard, is feasible and in tune with the prevailing conditions; under such circumstances, the scholars and jurists who are purely pious and God-fearing besides having thorough knowledge, are allowed to give a "*Fatwa*" on the lines which make the things easy. In fact, on such sensitive issues, it is preferable to resort to the collective deliberations rather than giving out *Fatwas* (Edicts) individually.
- 1.7 Such issues upon which a section of renowned scholars and jurists feels the need to adopt another opinion and accepts a particular Fiqhi recommendation to get rid of the taxing situation and issues a "*Fatwa*" in this regard whereas the other group differs from it and sees no necessity at all to accept this particular Fiqhi recommendation, under such circumstances, the common people are permitted to adopt the former recommendation which has been justifiably called and is an easy and facilitating way. It is quite permissible for the "*Fatwa*-givers" to issue *Fatwas* (Edicts) accordingly.

2

Injunctions regarding Feeble *Ahādith*♦

The experts of *Ahādith* have sorted out authentic *Ahādith* from many false and concocted ones during the classical age and have given different grades to them on the basis of their authenticity. However, many of the degraded narrations have somehow crept into the treasure of authentic ones, especially in hearsay and common parlance. The participants of the Eleventh Seminar contemplated on the matter and resolved as follows.

- 2.1 After a thoughtful discussion on this issue, the seminar came to the conclusion that there has always been an uproarious contention amongst the scholars on this topic. Some of them have given every kind of reliable and unreliable traditions, the status of correct and valid. It, in no way, conforms to the saying of Prophet Muhammad (Pbuh):

"من كذب عليّ متعمداً فليتبوأ مقعده من النار"

"Anybody who lied upon me deliberately, then he has made his abode in the hell."

On the other hand, there are some scholars who consider a Tradition totally rejectable and

♦ 11th Fiqhi Seminar (Phulwari Sharif Patna) 17-19 April 1999.

unauthentic, if there exists some weakness in its *Isnad* (chain of narrators), even though feeble *Ahādith* are also acceptable on certain occasions under special circumstances.

In explicit words, it means that if a narrated Tradition is Feeble because of some weakness in its *Isnad*, it does not necessarily mean that its text and content is unacceptable under all circumstances.

- 2.2 Forged or concocted traditions are completely unreliable. Neither can any conclusion drawn from them nor can they be used as a reference without mentioning their status. However, in case a concoctor of *Hadith* is identified in the chain of narrators, it would not be fair and wise to presume its text and content forged relying on its *Isnad* alone without scrutinising its contents by other methods. The *Hadith* concerned might have been narrated through some other *Isnad* in which there is no concoctor.
- 2.3 If a Tradition has been quoted by several renowned jurists, *Mujtahids* (persons who possess deep knowledge of Islamic Shariah especially Islamic jurisprudence) and *Muhadditheen* (great scholars of *Ahādith*) as a proof or they have suggested to act upon it or going further they have interpreted the text in some other way and decided a meaning other than the apparent meaning instead of rejecting it, then it is called *Talaqqi-bil-Qubool* (received by acceptance).

- 2.4 By means of *Talaqqa-bil-Qubool* (received by acceptance), even a weak Tradition by *Isnad*, gets the status of an accepted one.
- 2.5 Besides *Talaqqi-bil-Qubool*, the weak Traditions become reliable and hence acceptable if they are in consistence with the true *Ahādith* and pronouncements of the *Sahaba*.
- 2.6 The Traditions whose narrators are not accused of being liars and *Fāsiqs* but happen to be persons with a weak memory shall be strengthened by examining them in various ways. This kind of Tradition falls under the category of *Hasan li-Ghairihi* (correct by other ways) provided that the narrator in the other *Isnad*, is also accused of having a weak memory only and not of being a liar and a *Fāsiq*. The weak Traditions which are in a vivid contrast with other established texts or the weakness is due to the narrator's being accused of being a liar or a *Fāsiq*, then these would not be acceptable and applicable neither in the acts of virtues nor in precepts.
- 2.7 Feeble Traditions are valid for persuasion, and encouragement and intimidation; provided they do conform to the basic principles of Shariah and are not too feeble. While acting upon them, one may expect reward or punishment as stated in them but one should not have the unflinching belief in them.
- 2.8 In view of the present deterioration in academic standards, it would be apt and better for scholars

to quote only the established, correct and authentic Traditions in their orations and writings. Nevertheless, if it is necessary to quote a weak Tradition, they should certainly mention their status, rank and degree of authenticity in an appropriate manner so that quoting of feeble and unauthentic Traditions may not prevail in society.

- 2.9 If the weakness of a Tradition lies in its *Isnad*, due to the narrator's weak memory and not because of lack of justness and, moreover, it is not contradicting any correct or established text, it can be justifiably utilised for precautionary obligations, i.e. to ascertain the desirability and undesirability of something.
- 2.10 Those matters on which any other evidence from the Shariah point of view does not exist, the Tradition having weak *Isnad* could be employed to prove and verify other matters as well. These Traditions are relatively better than the reasoning based upon reasons unstated in Shariah. Moreover, this has been the stand adopted by our entire predecessors.¹

¹ Mi. Dr. Abdullah Jolam did not agree with clauses 9 & 10.

3

Consideration for 'Want' and 'Necessity' in Shariah♦

The Islamic Shariah is binding and obligatory as on Muslims who live in countries governed by non-Muslims as it is on those who are governed by the Muslims. The extent of government's governance today has not remained restricted to only a few areas, as it has assumed for itself the right to make laws, plan and oversee all aspects of human life. Millions of Muslims living in the system and atmosphere raised on Western non-Islamic style (especially those who live in non-Muslim countries) are in acute suffocation and constraint as the observance of Islamic Shariah has been rendered more difficult for them due to governmental legislation. If they give up observance of the Islamic *injunctions* their heart censures them. If, on the other hand, they strictly abide by those Islamic *injunctions* they are put to severe constriction and restriction.

Under such circumstances it is badly needed to identify those basic guidelines in the light of the principles of *Raf-e-Haraj* (Elimination of Constriction), *Daf-e-Zarar* (Removal of Harm), *Zaroorat* (Need) and *Izterar* (compulsion) on which grand theologians ('*Ulemā*) and the people responsible for passing edicts (*Ifta*) may take

♦ 7th Fiqhi Seminar (Bharuch Gujarat) 30 Dec 1994 – 2 Jan 1995.

proper decisions on general problems and needs of the present age so that the Ummah can be relieved of acute restriction and constriction where there exists any possibility and probability in this regard in Shariah, providing with ease and amenity to the Muslims, within the precepts of Shariah and the serious danger posed by unrestricted use of the principle of *Haajat* and *Zaroorat* could be prevented. Therefore, the Seventh Fiqh Seminar of Islamic Fiqh Academy considered the pertaining issues and the following decisions were made.

Resolution I

- 3.1 Basically there are five *Masaleh* (exigencies) whose achievement is the object of the Islamic laws: Protection of (a) Religion (b) Life (including chastity and honour) (c) Intellect, (d) Wealth and (e) Race. The thing, which is so imperative that its want causes strong presumption, rather surety, of the loss of these expediencies, is called 'Necessity'. Necessity is a permanent terminology of the jurists, which includes 'Want' as well. However, comparatively 'Want' contains vast and general connotations of 'Necessity'.
- 3.2 Want is a state in which man indulges to achieve the above noted five expediencies and in doing so falls prey to such toil and harm from which Shariah aims to protect. However, the jurists sometimes interpret 'Want' as 'Necessity' and vice-versa.
- 3.3 'Want' and 'Necessity' both are basically related to toil and labour. To a certain degree toil is

obligatory in all precepts of Shariah and it cannot be used in any change of the precepts. Sometimes the toil becomes so rigorous that if no leniency is made, it surely causes grave harm. This stage is called 'Necessity'. Sometimes the toil is comparatively less severe but in comparison to the toil made obligatory by Shariah for the human beings it is of extra ordinary nature. This state is 'Want'. Hence, the basic difference between 'Want' and 'Necessity' is only the fluctuation of labour.

- 3.4 The jurists have differentiated in the provisions of 'Want' and 'Necessity' as well, which, in short, is that under 'Necessity' there can be room for exemption from such definite and categorical orders, which are irrevocably prohibited. But if Want is not of prohibitive nature it can have the room of exemption only in such orders which are not required to be prohibited by themselves but for the remedy and prohibition of other forbidden things.
- 3.5 In case the Want is of general nature and people are in general exposed to it, such Want falls under the category of Necessity and causes exception and singularity in the Categorical Sources (*Nusus*).
- 3.6 Toil is the foundation of Want and Necessity. Since toil is a relative thing there can be differences in the determination of Want and Necessity in view of the place, area, prevalent situation, the people's capacity of endurance; and the political status of the Muslims should also be taken into account, i.e. in countries where Muslims are in minority.

Therefore, while determining Want and Necessity the countries like India where the Muslims are not in a position of playing effective role in legislation, this angle should also be taken into account.

- 3.7 Determination about something whether it has the status of Want or Necessity under prevailing circumstances requires deep insight, careful screening of facts and deep contemplation. Therefore, it is the duty of jurists and theologians in every age to determine which matters have come under the category of Want and Necessity, which can be efficacious on the provisions, keeping in view the condition of that age. It is also very necessary that the individuals should not take such delicate and important decisions but a body of authentic and prominent jurists and theologians of the age should take the lead so that the door of libertinism may not be opened in the name of the prevention of harm to the Ummah.
- 3.8 If some special condition of a forbidden thing has been exempted from prohibition by any of the prime sources (*Nusus*) of Islam either explicitly or through guidance, in that case it no longer remains prohibited and it is necessary to take advantage of this exemption. Apart from this, where exemption or relaxation is proved through contemplation or collective deliberation of the jurists or by some categorical order (*Nas*), it is only for the removal of sin.
- 3.9 The facility provided on account of Want or Necessity is exceptional in nature as per principle.

Resolution II:

The injunction of permission and indulgence on the ground of Necessity will be applicable to nearly all the chapters of jurisprudence with the exception of '*Haram-le-ainehi*' like the rights of persons such as murder of *Nafs* (Person) and *Zina* (Fornication), etc. and the limits of its influence will be different according to the details noted below.

- 3.10 If the injunctions belong to the category of the commanded ones and their non-compliance afflicts only rights of the Legislator, like uttering words of blasphemy, etc. in such a case although these are themselves unlawful but will be allowed to one who is in the state of helplessness and constrain, i.e. in spite of its illegality it will not be considered a sin.
- 3.11 If the injunctions belong to the category of the forbidden things and their violation affects only the rights of individuals like consumption of pork, dead/carrion, drinking of wine, etc. in an involuntary state, such things become permissible only in case of compulsion and coercion, hence these afflict no sin.
- 3.12 If the injunctions are in the category of forbidden things but their disobedience afflicts the rights of other people, e.g. culpable homicide, rape, adultery, destruction of the property of a Muslim, etc. the matter it will be dealt in two ways.

- a) If it is possible to compensate the right of people, e.g. the destroyed property of a Muslim can be compensated by payment or support, it will be permitted in that case of duress.
- b) But if it is not possible to compensate the destroyed right of the people as can be in the case of murder or rape, it will not be permitted even if it is committed under duress, and it will be illegal to act upon it.

Resolution III

Sometimes 'Want' also plays an effective role like 'Necessity' in the permission of the prohibited and sometimes under certain conditions 'Necessity' is made replacement to 'Want'. But there are certain conditions and limitations, which should be kept in mind positively.

- 3.13 Prevention of harm should be the motive in allowing the prohibited things for the sake of 'Want', and not the acquisition of any benefit. No prohibited thing can be permitted for the sake of benefit.
- 3.14 When the motive is to avoid the unaccustomed labour on account of 'Want', such labour cannot be counted as reliable Want, which is generally associated with human actions and in the injunctions of Shariah.
- 3.15 When there is no other legal alternate is available to achieve the end or if there is such a way, it is accompanied with unbearable difficulties.

- 3.16 Any order granted on account of 'Want', shall be consonant to the degree of 'Want' and no extension will be permitted in it.
- 3.17 No greater harm should emerge from avoiding a harm.
- 3.18 The 'Want' should be genuine and not a fancied one.

Resolution IV

The following conditions should be positively found regarding genuine 'Necessity' in order to permit the prohibited things.

- 3.19 The Necessity should be present and not presumed or surmised to occur in future.
- 3.20 There should be no other legal alternative available.
- 3.21 Danger of death or loss should be definite or it should be very strongly presumed one.
- 3.22 There should be surety that use or commission of the prohibited will ensure revocation of any grave harm and in case of non-usage the grave harm will positively occur.
- 3.23 The prohibited should be used only in accordance to Need.

- 3.24 Its commitment will not cause any other mischief either greater than it or equal to it.

Resolution V

- 3.25 There are several reasons in the background of the cases wherein the Shariah due to "Want and 'Necessity' grants permission. The theologians and jurists call these reasons as "reasons for exemption" and "reasons for remission". According to a well-known statement these reasons are seven in number: Journey, ailment, abhorrence (duress), forgetfulness, ignorance, distress and general harm, out bleak and deficiency.
- 3.26 Very often, Want, Necessity and avoidance of harm is involved in the orders based on 'common and general usage', although, from juristic point the field of common usage and the orders derived from it are somewhat more vast.

Resolution VI

- 3.27 It is unanimously agreed that in case of general harm and distress in some matter, it is sometimes given the status of Necessity and Exigency, and illegal things are permitted if there is an extraordinary harm and distress to the society.
- 3.28 If general necessity, general harm and distress occur in matters whose prohibition is established by the Categorical Sources (*Nusus*), it is a delicate matter of great responsibility to exempt them from prohibition in the case of Necessity. All the collective and social Necessities are not of the same

degree and their sphere and inevitability is also different from one another. Therefore, it is imperative to study each of them deeply before taking juristic decision regarding collective Necessities.¹

- 3.29 When a Collective Necessity assumes so much importance that it could hardly be avoid it and there may be no legal and feasible alternative of it, or there may be no way out due to the local legal coercion, in such cases justification can be found for the remission in that matter, in spite of its categorical prohibition but only till such a Necessity lasts.
- 3.30 Very deep and detailed examination of the collective Necessity is very necessary before taking a decision of this serious nature and the help of legal and social experts should be requisitioned according to the need, in this regard. After consulting experts of the field in which the collective Necessity arises, and having obtained necessary details of the issue, the God- fearing prudent theologians and jurists can conclude which collective Necessity has reached the stage where the *Millat* will be gravely harmed either immediately or in near future if this necessity is over looked, hence, decision of its justification should be adopted.

¹ **Note:** Mufti Shabbir Ahmad Qasmi of Moradabad dissents in the remission on the ground of public Necessity in the categorically prohibited matters.

3.31 The theologians and jurists should not take the decision through their individual efforts about specification or exemption in the categorical orders on the ground of collective Necessity. Instead, the decision should be taken by a large number of theologians and jurists through their individual efforts. Instead, the decision should be taken by a large number of theologians and jurists after collective deliberation in the light of juristic principles keeping in view the injunctions of Shariah and the reasons behind them. Only collective decisions in such delicate matters are proper and satisfactory.

4

Validity of Customs and Practices In Shariah♦

Various customs, rituals, traditions and practices prevalent among people of a certain region or period play a very important role in their day today life. Technically they form a category in the Islamic Jurisprudence called as '*Urf*'. Some of them would be found very close to the Shariah whereas some others would be considered as contrary to it. And, there might be some others, which the Shariah neither endorses nor it denies to. Therefore, a categorical understanding regarding these customs and practices is required in every age to make it clear what relation they hold vis-à-vis the Islamic Law. Theologians assembled in the Eight Fiqh Seminar of the IFA have discussed on the relevant issues and reached to the following conclusions.

The reality of custom and its various forms are as under:

- 4.1 Literally '*Urf*' means a commonly known matter. In the terminology of Shariah by '*Urf*' are meant such sayings and acts, which are prevalent in a given society and people act in accordance thereof.

♦ 8th Fiqhi Seminar (Aligarh Muslim University, Aligarh) 22-24 Oct 1995.

- 4.2 *Aadat*, in lexicon, means the occurrence of something. Terminologically it covers such things, which, without any rational relationship, occur so repeatedly that observance of the same becomes as common as of something natural.
- 4.3 There are no substantial difference between '*Urf*' and '*Aadat*'. Both are the same in their intent and import, though different in their applications.
- 4.4 The difference between '*Urf*' and *Ijma* (Consensus) is that '*Urf*' emerges out of the conduct of people in general whereas *Ijma* (Consensus) is unanimity of opinion of *Mujtahideen* (Interpreters) on a given issue.
- 4.5 '*Urf*' is of two kinds: spoken '*Urf*' and '*Urf*' by deeds. When some word or combination of some words begin to have a particular meaning among a people and, when spoken, every one starts taking them to mean the same without necessarily any rational or logical connection, it is termed as a spoken Custom ('*Urf-e-Qauli*'). The way in which a people normally and usually act is '*Urf-e-'Amali*' (Practice).
- 4.6 Shariah acknowledges the '*Urf-e-Qauli*' and '*Urf-e-'Amali*', both. If something gains currency among majority of Muslim population of the world it would be '*Urf-e-'Aam*' (Common Custom). If it becomes prevalent in a particular city, province or township or limitedly among a particular group of persons, it will be '*Urf-e-Khas*' i.e. Particular Custom.
- 4.7 Every such '*Urf*' or Custom which runs contrary to any specific injunction of Shariah, or its spirit or any accepted objective of Shariah, will be invalid,

e.g. giving of *Jahez* (dowry) at the time of marriage as has become customary, or demanding money and other valuable items from the bride's people by the bride-groom, depriving girls from inheritance, utilising the usufruct of the property taken in mortgage, etc.

In Shariah, there are following four conditions for and 'Urf being acceptable.

- 4.8 It should be either total or shared by a large number of people, i.e. either entire person in a given society be its adherent or an overwhelming majority of them.
- 4.9 It should already have been in existence prior to the occurrence of a particular incident and be in vogue at the time of its occurrence.
- 4.10 There should be no specific understanding between the parties to a deal running contrary to the 'Urf.
- 4.11 Acting according to the 'Urf should not entail contravention of any clear injunction of the Shariah or violation of a clear principle laid down by Shariah.

The distinction between Shariah and Custom could be understood from the following statements:

- 4.12 If a commonly in vogue 'Urf is at variance with a general *Nus* (Plural *Nusus* i.e. Injunctions of Shariah) in such a manner that acting according to 'Urf may not entail the giving up of the a categorical injunction (*Nus*) altogether but only particularises the general *Nus*, in that case it is permissible to particularise the *Nus* in its

application for the purpose of acting according to the '*Urf*.

- 4.13 In case a commonly in vogue Custom is in conflict with the *Nus* so much so that acting on '*Urf* entails the giving up of the *Nus* altogether, then the '*Urf* will not be acceptable and shall not be acted upon.
- 4.14 Those *Nusus* in respect of which it is conclusively established that those are based on some '*Urf*, the injunctions flowing from such a *Nus* may be altered with the change in the '*Urf*. However, it is emphasised that to decide whether a *Nus* is based on '*Urf* is an extremely delicate job warranting extreme caution. Renowned and celebrated Islamic scholars who are quite God-fearing and cautious in their approach can only give an authentic finding in the matter collectively.
- 4.15 If a Common Custom ('*Urf-e-'Aam*) is in conflict with something based on *Qiyas* (analogy), '*Urf* will take precedence and *Qiyas* will not be acted upon against '*Urf*.
- 4.16 In case where a Particular Custom '*Urf-e-Khas* is in vogue in a very limited area, then *Qiyas* (analogy) cannot be given up because of such and '*Urf*.
- 4.17 If and '*Urf-e-Khas* is prevalent in a very large area, then it would be acceptable to give up *Qiyas* against it.
- 4.18 If any '*Urf* is in conflict with the fundamental objectives of Shariah, then such an '*Urf* will have no value and will be ignored.

Change in Custom changes injunctions, as shown here:

- 4.19 Those issues of *Zahir Riwayat*, which stand proved on the strength of clear *Nusus* (Qur'an and *Sunnah*), will not be given up because of any '*Urf*. However, the issues emanating from the same can be given up against an '*Urf*.
- 4.20 If an opinion expressed in one school of Fiqh (Islamic Jurisprudence) be contrary to an '*Urf* while there is another opinion in any other school of Fiqh which is in consonance with the general conditions governing the validity of an '*Urf*, adopting that other opinion will not tantamount to (going out of the parameters of Shariah), rather acting on the '*Urf* is recommended.
- 4.21 Those verdicts, which are based not on *Nusus* (Categorical Sources that is the Qur'an and *Sunnah*) but only on '*Urf* and practice, will be modified in consonance with newly emerged '*Urf* in case the '*Urf* changes.

B. Issues related to Worship and Offerings (*Ibadat*)

- 5 Position of Mosques according to Shariah
- 6 The Issues related to *Hajj and 'Umrah*
- 7 *Zakaat* and the Exemption of Bare Necessities
- 8 *Zakaat* on Debts
- 9 *Zakaat* on Business Advances and Security Deposits
- 10 *Zakaat* on Diamonds and Jewelry
- 11 *Zakaat* on Provident Funds
- 12 Investment of *Zakaat* Money
- 13 Collection of *Zakaat* on Commission
- 14 *Zakaat* on the Assets of *Madāris*
- 15 *Zakaat* on Prohibited Sums (*Maal-e-Haraam*)
- 16 Payment of *Zakaat* as Stipends to Students
- 17 Clarification on the Meaning of *Fi Sabilillāh*
- 18 Lands on which Agriculture Cess (*'Ushr*) and Revenue is Levied
- 19 Deduction of Expenses for determining the *Nisaab* of *'Ushr*
- 20 Method of Payment of Revenue (*Kharaaj*) and adjusting it against the Government Revenue
- 21 Agriculture Cess (*'Ushr*) on Produce of *'Ushri* Lands
- 22 *'Ushr* on Lands under Tenancy
- 23 *'Ushr* on Fish, *Makhaana*, Silk, etc.

- 24 *'Ushr* on the Fruits and Vegetables grown in Courtyards, Roof-tops, adjoining Lands and on *Waqf* Lands
- 25 The Issues related to *Awqaaif*
- 26 The Creation of New *Awqaaif*
- 27 Issues related to Slaughtering
- 28 Applying Modern Methods of Treatment During Fast
- 29 Starting Point of a Journey
- 30 Shariah Command convening the Place of Employment
- 31 Rami Jamar
- 32 Stay Outside Mina
- 33 Which Place will hold credibility during the days offering Sacrifice?

5

Position of Mosques according to Shariah♦

The role of mosques is central in the Islamic life and the Shariah takes categorical position regarding their establishment, repair and maintenance and their shifting from one place to the other. On the one hand the process of urbanization has raised several issues in this regard and on the other the anti-Islamic forces have made several mosques as the targets of their hatred and antagonism towards Islam and such mosques came under historical and administrative controversies pressing the Muslim Community to reconsider their claim on the land and structure of the mosques at a given place. Hence, the Thirteenth Seminar of the IFA thought it proper to consider the matter in the emerging situation in the country and elsewhere in the world and to guide the Ummah in an appropriate manner on the issue. The following decisions were set out on the occasion.

5.1 The stand of Islam about the status of mosques is quite clear. Scholars have unanimity on the point that a mosque once constructed shall remain a mosque till Dooms. It can neither be sold or bought nor be gifted to any one. No individual or

♦ 13th Fiqhi Seminar (Jamia Syed Ahmad Shaheed, Katuli) 13-16 April 2001.

government can change its status. Mosque is, in fact, a piece of land endowed to the cause of religion and worship. A mosque is not a set of walls and arches and the material used in its construction. Hence, if the structure of a mosque is demolished aggressively or no prayers are offered or allowed in it for a long time due to some reason, it shall not cease not to be a mosque in any case. Shariah obligates the Muslim to resume offering prayers in it.

- 5.2 The purpose of a mosque is to worship the Creator of the universe and to negate the worship of everything other than Allah. Permission can never be granted to build an idol temple in place of the mosque, as it will be detrimental to the cause of the mosque. It will not only be against the principle of religion and faith but also against reason to make use of a thing for a purpose contrary to it.
- 5.3 Islam is the sole representative of the Unity of Allah. It invites the entire humanity to the eternal truth that the Creator of the entire universe is the Absolute Being who does not take partners with him. Besides, it also teaches us co-existence and justice and does not believe in compulsion in religion. It forbids people from grabbing individual, social or religious property of a community to convert it forcibly into a mosque. Therefore, it is wrong to claim both historically and religiously that the Muslims forcibly occupied the property belonging to another community to turn it into a mosque.

5.4 This seminar of the Islamic Fiqh Academy unanimously clarifies that any compromise aimed at changing the status of Babri Mosque or any other mosque to convert it into a temple shall never be acceptable to the Muslims of India.

6

The Issues related to *Hajj* & '*Umrah*'♦

Hajj and '*Umrah*' comprise a very important mode of worship in Islam and the Shariah lays down very elaborate regulations for performing them. However, the exponentially increasing number of pilgrims, the emergence of modern means of transportation and use of modern technology in the performance of *Hajj* and '*Umrah*', has posed several questions before the Islamic theologians and scholars. The Tenth Seminar of the Islamic Fiqh Academy has attempted to address to these pressing questions and reached to the following conclusions.

- 6.1 *Hajj* happens to be an extremely important pillar of Islam. It is incumbent upon every capable person to perform it once in his lifetime. Normally, the *Hajj* pilgrims have to undergo travels and hardships on the long and treacherous journey and bear huge expenses. Precisely, that is why, Allah has assured great rewards for it. Moreover, Prophet Muhammad (pbuh) has compared this mode of worship with a kind *Jihaad*. The *Hajj* pilgrims, therefore, should bear these hardships and the tiring, thinking them to be a boon for themselves. While performing *Hajj*, people should take precautions in all aspects as far as possible and on those issues which is where the

♦ 10th Fiqhi Seminar (Hajj House Mumbai) 24-27 Oct 1997.

scholars have a divided opinion (and often contradictory at times), some of them suggesting a bit liberty and some asking for a bit constraint, then under such circumstances, such a mode of action should be adopted which would be correct and apt according to both approaches. One must also avoid lethargy and indolence while performing this great worship.

- 6.2 It is obligatory upon persons living out side the limits of *Meeqaat* and also upon those living in Makkah or Hil to don the prescribed robe called *Ihraam* if they move to Makkah with the intension of *Hajj* and '*Umrah* or otherwise.

In the present scenario, there are a lot of people like traders, office workers, taxi-drivers and people engaged in other professions to enter the *Haram* frequently even more than once a day. The rules mentioned above, definitely, creates enormous problem for these people. Therefore, they should be allowed to enter the *Haram* without the mandatory obligations of sporting an *Ihraam*.

- 6.3 Those people who are the inhabitants of Makkah itself or are staying there are *Muqeems*. Thus, they are not required to perform '*Umrah* during the months of *Hajj*. A person, who has to perform *Hajj* this year and intends to perform *Hajj* this year, should avoid going out of *Meeqaat* during the months of *Hajj*. However, if he is compelled to go outside being a trader, an office-goer or because of his own professional obligations, then he should follow the above-mentioned Clause 2 and restrain

from donning *Ihraam* while entering *Meeqaat* and performing *'Umrah*.

Muqeem in Makkah means the people who have settled down in Makkah properly before the *Hajj* months or staying there for at least one year.

- 6.4 The international pilgrims who perform *Tamattu* (performance of minor pilgrimage along with the major one) can perform the *'Umrah* in addition, before donning the *Ihraam* for *Hajj*.
- 6.5 These days, the *Hajj* pilgrims, generally, do not venture out themselves towards *Rami Jamraat* on lame excuses or, sometimes, without any adequate reason. Rather, they depute others as their deputies. Almost all the scholars are unanimous that under such a circumstance an important obligation of *Hajj* remains unfulfilled. In fact, this sort of deputisation of other persons for *Rami* is not reliable from the Shariah point of view and people who do so are under obligation to compensate it by sacrificing an animal. Nevertheless, people who are incapable to make it to the *Jamaraat* being physically weak, senile or patients can obviously nominate other people as their deputies.
- 6.6 A milling crowd itself is not a reasonable ground. A plausible and better solution to it would be, if a person is incapable of going and performing *Rami* in such a milling crowd during the rainy season (as prescribed by the Prophet (pbuh) he/she may also perform the same in the *Jawaaz* (justifiable) period after that season or even in the *Karaahat*

(abomination) period if there is some serious problem. Evidently, it would not be unbecoming and abominable at all for him/her.

- 6.7 According to decisive pronouncements of Hanafi school, it is imperative to fulfill the obligations on the 10th Zilhijjah according to the following order: *Rami, Zabh* (to sacrifice according to the Islamic tenets) and *Halaq* (Sharing of head): The *Hajj* pilgrims should see that they follow this particular order as much as possible. Nonetheless, there is, of course, room for following the words and actions of other scholars and people in case of extreme temperature, the milling crowd and the distance of the slaughtering place, etc. Hence, the *Dam* (punitive sacrifice) would not be obligatory even if these obligations were fulfilled in contrast to the prescribed order.
- 6.8 Hundreds and thousands of *Hajj* pilgrims visit Makkah during the *Hajj* season from all over the world and perform the *Hajj*.
- (a) The responsibility for management of the entire *Hajj* programme lies with the Government of Saudi Arabia. *Hajj* is a collective form of worship. It is necessary to perform it in a systematic manner following the rules of Shariah. Apparently, it is indeed impossible to look after the lodging, fooding, health and security of life and property of thousands of people without a proper, systematic and coordinated approach. In such a situation, the Government of Saudi Arabia imposes a

number of administrative restrictions so that the number of pilgrims could be regulated and they may be provided with better care. It is mandatory upon all the pilgrims to adhere to the administrative obligations laid down by the Government of Saudi Arabia. It falls under *Amr-bil-M'aruf* (Exhortation for Virtues), which needs to be followed strictly. Hence, if the resident Muslims in Saudi Arabia are refused the permission to perform *Hajj* every year as per the rules and regulations laid down by the Government of Saudi Arabia, then such a restriction is imperative according to Shariah.

- (b) Furthermore, if a person violates these restrictions, dons *Ihraam* and enters *Meeqaat*, and is caught later on and the security personnel make him return back, the situation would demand a similar course of action as in the case of a *Muhassar-anil-Hajj* (One who is restrained from performing) from the Shariah angle, which means that he is supposed to perform a punitive sacrifice (*Dam*). The moment he gives a *Dam* within the boundaries of *Haram*, he would immediately become free from the restrictions with regard to *Ihraam*.
- 6.9 In case of a *Hajj-e-Badal* (*Hajj* in Exchange), according to the rules of Shariah, the *Hajj-e-Ifraad* ought to be performed as per the general principle. However, the one who intends to perform the *Hajj-e-Badal* should explain the details to the one who wants to get the *Hajj-e-Badal* performed and finally seek his permission for a *Hajj-e-Tamattu* or an

absolute *Hajj*. If due to some reason he fails to get the permission for the same, then since the *Hajj-e-Tamattu* is performed normally, even the person who wants to get the *Hajj-e-Badal* performed would also have performed the *Hajj-e-Tamattu*. Therefore, keeping in view the customs and traditions, the entrusted person is allowed to perform *Hajj-e-Tamattu*. Under these circumstances, he will have to don *Ihraam* for *'Umrah* on behalf of the *Aamir* (orderer). Moreover, the expenses incurred in the *Dam-e-Shukr* would also be borne by the *Aamir*.

6.10 In case, a woman happens to undergo the menstruation cycle, or puerperal hemorrhage before the *Tawaaf-e-Ziyaarat* (ritual circumference for sighting Kabah) and finds herself incapable of cleansing herself as per her pre-planned schedule and performing the *Tawaaf-e-Ziyaarat*, she should try her level best under such a situation, to prolong and postpone her journey schedule so that she might cleanse herself, perform the *Tawaaf -e-Ziyaarat* and then return back to her home. However, if the efforts on her part go in vain and the journey cannot be postponed further before the cleansing, then she can perform *Tawaaf-e-Ziyaarat*. This *Tawaaf-e-Ziyaarat* would, of course, be valid in the eyes of Shariah and she will be considered as completely permissible. Nonetheless, she would have to sacrifice a *Budnah* (big animal) as *Dam* for her impurity, within the boundaries of *Haram*.

6.11 In a situation where the husband of a woman expires during the *Hajj* journey and she has not put on *Ihraam* as yet and it is possible for her to return

back to her place, then she should go back to her place and complete *Iddat* (probation period). However, if she has already put on *Ihraam* and the journey back home is fraught with difficulties, she may perform *Hajj* and *'Umrah* during the *Iddat* period.

- 6.12 If the Pilgrim reaches Makkah in a way that the *Hajj* commences before his a fortnight-long stay and he goes to *Minaa*, then he will be considered a wayfarer. He should curtail (*Qasr*) prayers having four *Rakats*.
- 6.13 Usually, the three *Rakats* of *Witr* prayers are offered with two *Salaams* in the Arab world. There is room for *Hanafites* to offer '*Witr*' prayers led by such an *Imam*. Alternatively, the Hanafi followers may not say "*Salaam*" after two *Rakats* when the *Imaam* offers the three *Rakats* of *Witr* prayers followed by two *Salaams* and should stand up along with the *Imaam* for the third *Rakat*.

7

***Zakāt* and the Exemption of Bare Necessities ♦**

The institution of *Zakāt* is a unique contribution of Islam to mankind. The underlining concept involves sharing of surplus resources with needy and destitute. The tenet of *Zakāt* does not demand of parting away all things in one's own possession but it prescribes to help others after spending on one's own self and on the dependents. An important condition for the obligation of *Zakāt* is that the goods in one's possession should be in excess to his essential needs and requirements. However, there might be some confusion regarding what should Shariah meant by essential needs and requirements of an individual? The Fifth Seminar of Islamic Fiqh Academy included this item in its agenda and several conclusions were made.

It was agreed that the items, to be considered essential for an individual, fall under this category:

- 7.1 The daily expenditure incurred on self, direct dependents and dependent relatives.
- 7.2 The house in which one resides, clothes, means of transport (vehicle, horse, car, tanga or any other

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

mode of transport), tools of trade, machinery or any other means used for earning the livelihood.

- 7.3 The necessities of life will be determined according to the standard of living of a person in conformity with the time and region.
- 7.4 These include the necessities, needs and requirements of life and the daily expenditure thereon. The total calculations of *Zakāt* shall be of one whole year. However, the funds or any other goods which are in excess to necessary requirements and are set aside as reserve for next year will not be deducted for computing the *Nisab* (amount above which payment of *Zakāt* becomes obligatory) for determining the obligation of *Zakāt*.

8

Zakāt on Debts♦

In the computation of *Zakāt* one particular problem that arises is the calculation of *Zakāt* on the amount loaned to others. Since the owner of the debt is not in the direct and actual control of the amount although the lender owns it in principle, the status of such an amount or amounts should naturally differ from the normal wealth. This problem and inter-related issues were discussed in the Fifth Seminar of the IFA and the following conclusions were drawn.

- 8.1 The debts given to others are of two kinds. One, which is recoverable and there is every hope of receiving it. The second is the dead loan of which there is no hope of recovery.
- 8.2 *Zakāt* will not be obligatory on the lender if, in spite of his persistent demands, the debtor dillydallies to such an extent that the creditor loses all hope of realising repayment of the loan. If ever such a loan is realised *Zakāt* will be liable on it only after one year of its recovery.
- 8.3 The Loan, which is to be recovered, might have any of these three conditions:

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

- a. That it is loaned in cash or as the price of commercial goods due from somebody. *Zakāt* will be due on this amount after its realisation for the previous years as well.
- b. The liability, which is neither in lieu of commercial goods nor as loan, e.g. inherited goods or those, received through a will.
- c. The liability, which is not in lieu of some goods, e.g. the amount of (*Mehr*).

Zakāt will be obligatory on (b) and (c) one year after realisation of the loaned amount. No previous year's *Zakāt* will be payable on them.

- 8.4 As for amount of the installments to be paid in a year for the long-term loans taken from government or private institutions, *Zakāt* will be obligatory on the amount of all such long-term loans. Only the amount of yearly installments of repayment will be deducted while computing the *Nisaab*.

9

***Zakāt* on Business Advances & Security Deposits♦**

The present day business transactions involve various kinds of advances as a part of deal or deposit of securities for materialising certain agreements. Although proprietary rights of such advances and deposit remains to be that of the first party, however, it does not enjoy the same practically so long as the advances or securities are not returned to the first party. Therefore, the question arises that for the sake of calculating due *Zakāt* whether the person or group of persons thus involved should include the amount of advances and securities as a taxable asset or not? The Fifth Seminar of the Islamic Fiqh Academy mooted on this issue and passed the following judgements.

- 9.1 *Zakāt* will not be obligatory on the amount which one pays as advance price of commercial goods but has not been delivered the possession thereof. It will, however, be obligatory on the seller who still holds the goods and has also received the price in advance.
- 9.2 As for *Zakāt* on the sold goods, in case of *Bai Salam* (advance deal) and *Bai Istisna*

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

(consideration amount) it will be obligatory on the seller before handing over the goods to the buyer. Apart from the sales in the above two manners, another sort of sale in which the sale has been finalised but the buyer has not taken possession of the goods, also falls in this category, and therefore, the *Zakāt* on such goods will be obligatory on the seller and not on the buyer.

- 9.3 Regarding the security deposits paid while taking a property on rent, general opinion of the participants was that *Zakāt* on such deposits would not be due on the tenant. Some were of the opinion that *Zakāt* on the advance deposits shall be due on the landlord while some favoured the view that *Zakāt* will be due on nobody.

10

Zakāt on Diamonds and Jewelry♦

Diamonds, jewelry and other precious stones are highly valuable. The motive of their purchase and possession may be different for different persons. Hence, with the change in conditions, the injunction should also change. The Fifth Fiqh Seminar reached to the following conclusions in this regard.

- 10.1 *Zakāt* on the diamonds, etc. will be obligatory on the purchaser if purchased for commercial purposes.
- 10.2 *Zakāt* will not be due on diamonds purchased for using as ornaments.
- 10.3 A small diamond is much costlier than even gold and some people purchase them to convert their wealth and thus preserve their cash for certain consideration. These diamonds can be readily cashed at the jewelers' shops and often they fetch higher price than their purchase price. Therefore, they are not only the means of preservation of wealth but a means of profitability as well.

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

This aspect of the issue also came under deliberation at the Seminar that a cash amount of millions of rupees can not only be preserved through purchase of some diamonds but they can be again converted into ready cash anytime.

- A. The first opinion was that diamonds are not vestigial items like gold or silver, nor the purchaser trades in jewels, nor he has the intention of its trade at the time of purchasing nor has any intention of making it a commercial commodity, hence, it does not fall in the category of *Naami*. Therefore, under such conditions *Zakāt* will not be obligatory on the possessor.
- B. The second argument was that diamonds are not considered as a necessity of life but a means of preserving the accumulated wealth and a means of profit as well. Therefore, *Zakāt* will be obligatory on these diamonds.
- C. Keeping in view all the arguments many participants opined that under the former condition *Zakāt* is not obligatory. But an equally large number of participants argued that non-obligation of *Zakāt* on this hoarded wealth will deprive the poor of their share of income and insisted on *Zakāt* being obligatory on diamonds.

¹ Ml. Qazi Mujahidul Islam Qasmi, Ml. Tayyab-ur Rahman, Ameer-e-Shariah Assam, *Mufti* Aziz-ur Rahman, Mumbai, Ml. Aijaz Ahmed Azmi, Ml. Mujeebullah Nadvi, Ml. Shams

Peerzada, Mumbai, Ml. Anees-ur Rahman Qasmi, Patna, Ml. Abdur Raheem, Bhopal, *Mufti* Abdul Rahman, Delhi, Ml. Zubair Ahmad Qasmi, Sitamarhi favoured payment of *Zakāt*.

² Ml. Burhanuddin Sambhali, Lucknow, Ml. Habib-ur Rahman Khairabadi, Deoband, Ml. Nematullah Qasmi, Deoband, Ml. Obaidullah Asadi, Banda, Ml. Khalid Saifullah Rahmani, Hyderabad, Mufti. Naseem Ahmed Qasmi, Patna, Ml. Sadrul Hasan Nadvi, Aurangabad, Ml. Mohiuddin, Gujarat, and others not favoured payment of *Zakāt*.

11

Zakāt on Provident Funds♦

The provident fund is a welfare concept of present day employment system in which both the employee and employer pool an amount regularly. The total amount thus accrued is returned to the employee at the time of his/her retirement along with some interest. Since the amount of the fund is not directly in the control of the employee until it is finally paid at the time leaving the job, then should it be included in the sum of wealth for calculating *Zakāt* on it or not? The Fifth Seminar of the IFA, responded to this question and reached upon the following derivations.

- 11.1 *Zakāt* will not be due on the provident fund unless it is finally received by the employee. If it amounts to the *Nisaab*, *Zakāt* will be due on it after one year of its receipt by the employee.
- 11.2 Provident fund is compulsorily deducted from the pay of an employee at a prescribed percentage. But some persons (to avoid income tax or due to other expediencies) deposit more than the obligatory amount in their provident fund. In case the accumulated amount thus voluntarily contributed reaches the level of *Nisaab*, then *Zakāt* will become

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

obligatory every year on that amount. This excess amount deposited voluntarily in the provident fund is a sort of trust, and *Zakāt* becomes obligatory on the trust amount.

12

Investment of the *Zakāt* Money♦

The Thirteenth Fiqh Seminar of the Islamic Fiqh Academy (India) held on in April 2001 discussed the matter of investing the *Zakāt* money and adopted the following resolutions in the light of opinions presented by some academic institutions.

In many countries and regions Muslims are reeling under utter poverty and economic backwardness. Non-Muslims and the Qadyani missionaries are making hay of the situation arising from Muslims' ignorance of religion and economic backwardness. By extending financial help to these poor and ignorant Muslims the missionaries are befriending them for the sole purpose of diverting them from their true Faith. To counter this situation it is extremely necessary to take steps for the well-being of such Muslims and remove poverty rampant among them and to help them get rid of the specter of hunger and starvation that has jeopardised their faith and religion. These Muslims deserve the most to be helped. It is the responsibility of Muslims in every country and region to send their *Zakāt* money to such poor Muslims and also to help them monetarily from other heads of charity in case the *Zakāt* money falls short of meeting the needs of hunger stricken Muslims.

♦ 13th Fiqhi Seminar (Jamia Syed Ahmad Shaheed Katauli) 13-16 April 2001.

The poor and destitute have proprietary rights on whatever they receive in *Zakāt*. If a destitute or needy person or a group of them invest the money received in *Zakāt* in a business to get benefit from the capital in the days to come, it will be permitted and the person who has given money will be treated as having fulfilled the obligation of *Zakāt*.

A person or a group of persons paying *Zakāt* is not permitted to invest *Zakāt* money in a beneficial business in order that the proceeds are distributed among those who are entitled for receiving *Zakāt*. The *Zakāt* will not be treated paid in this manner.

According to Shariah, it is permitted to purchase certain machines and equipments keeping in view the industry and craft in which the poor and needy persons may be interested, and give the same in the latter's possession. It is also permitted that taking into consideration the commercial needs of a destitute, a shop is built with the *Zakāt* money and is given in his possession. Thus, the person spending money on the equipment or the shop will be treated as having paid *Zakāt*.

If someone builds living quarters or shops and gives the same to the destitute and needy for residence and commercial activities without making the occupants owners of the property it will not be treated as payment of *Zakāt*.

While paying *Zakāt* care should be taken that the needy persons entitled for *Zakāt* in one's neighborhood are not ignored.

13

Collection of *Zakāt* on Commission♦

This has become prevalent among the majority of religious institutions and other organisations in India to appoint representatives to collect *Zakāt* from people on their behalf in the process of fund raising. In the Fifth Seminar of the Academy the matter was discussed at length and the following decisions was made.

The issue of the collection of *Zakāt* on the basis of commission was put to deliberations and it was resolved that the collection of *Zakāt* on payment of commission to the collector is not permissible.

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

14

Zakāt on the Assets of Madāris♦

In the Fifth Seminar the matter of *Zakāt* on the assets of *Madāris* was brought to discussion and the following decision was made:

There is no fixed owner of the funds of *Zakāt* paid to the *Madāris* or received for *Baitul Mal*. The owner of these *Amwal* (moneys) is Allah. Likewise the *Amwal* or amounts of money given as gift or *Sadaqat-e-Nāfela* to the institutions for expenditure on the deeds of virtue or for prescribed heads of expenditures, enter into the domain of Allah. Therefore, *Zakāt* is not at all obligatory on the amounts deposited in *Baitul Maal*, *Madāris* or other charitable institutions of utility and service to religion.

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

15

Zakāt on Prohibited Sums (Māl-e-Harām)♦

In the modern times the Muslims may add to their wealth and property such amounts, which are consciously or unconsciously earned from non-permitted means. At some stage the person concerned may realise the obligation to pay *Zakāt* of that amount and feels perplexed whether it would be permitted to disburse *Zakāt* of the amounts earned by some malpractice prohibited in Islam. Therefore, the participants of the Fifth Seminar of IFA resolved the following on the matter.

- 15.1 If some ill-gotten amount or valuable thing (*Māl-e-Haram*) comes into one's possession, and if it is intact as it was, and also if the real owner of this Amount (*Māl*) is known, it is obligatory to return this amount or valuable thing to its real owners.

- 15.2 If the quantity of Prohibited Sums (*Māl-e-Harām*) is not definitely known, its quantity should be fixed to the best of knowledge and assessment. It should be returned to its real owner. In case the owner is

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

unknown, it should be given as alms without any expectation of recompense from Allah.

- 15.3 If the owner of *Harām Māl* has become known and its return has become obligatory but is not returned and kept in one's own possession, and also if there is nobody to claim its ownership, in such a case not only *Zakāt* on this *Harām Māl* becomes obligatory on the person, he will also have to give away this *Māl* as alms without expecting any recompense from Allah.
- 15.4 Basically such ill-gotten acquisition (*Māle-e-Harām*) should be returned to the owner. If the owner is not known it should be given away as alms without expecting any recompense. If the *Harām* and *Halāl Māl* become intermingled, the estimated *Harām Mal* should not only be given away as alms but *Zakāt* should also be paid on it. This is to discourage the acquisition of ill-gotten wealth.

16

Payment of *Zakāt* as Stipends to Students♦

It has become a common practice that representatives of Madrasas collect some amount of public donations under the head of *Zakāt* and disburse the same on various expenditures of the institutions. The *Zakāt* is normally deposited on the plea of poor students studying in them. Doubts have been casted on its validity, hence, the issue was discussed in the Fifth Seminar and the following judgement was passed.

The average of monthly expenditure per student should be sorted out from the overall expenditure on the boarding, lodging and education of the students and this amount be paid to the students from the *Zakāt* fund either in cash or through cheques. The manager of the concerning Madrasa can also draw this amount from *Zakāt* fund and deposit it in the Madrasa account, provided the student himself (in case he is major) or his guardian (in case the student is minor) gives such authority in writing at the time of his admission.

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

17

Clarification on the Meaning of *Fi Sabilillāh*♦

Out of the eight heads of expenditure of *Zakāt* 'In the Way of Allah' i.e. *Fi Sabilillāh* have attracted some controversies regarding its connotation in modern time. Although its traditional interpretation is still dominating the scene, however, the organizations classified, as under the single group 'Islamic movement', tend to expand its meaning and interpretation for using *Zakāt* money for the propagation of Islam and in its revivalist struggle. In the Fifth Seminar of IFA the interpretation of term *Fi Sabilillāh* was deliberated upon with the following conclusions.

- 17.1 The participants of the Seminar were unanimous in the opinion that the verse, stating the heads of expenditure of *Zakāt* (Surah Taubah: 60), has limited its expenditure to eight heads only and this is full and final. No addition can be made to it. The inclusion of these eight heads in the said verse is factual and not supplementary.
- 17.2 The participants were unanimous that the meaning of *Fi Sabilillāh*, denoting to one of the heads of *Zakāt*, in this verse is only limited to

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) 30 Oct, 1-2 Nov 1992.

Armed Struggle. But a few participants opined that *Fi Sabilillāh* includes all those efforts as well, which are currently being made for the propagation and expansion of Islam.¹ But the general opinion was that in spite of the great difficulties in providing funds and financial assistance to boost up *Da'wah* work in the present time, there is no room for extending and generalising the meaning of *Fi Sabilillāh* to include in it all the religious and *Da'wah* efforts because there is no such precedent found in the early period of Islam. Moreover, diversion of *Zakāt* funds towards *Da'wah* efforts will deprive the poor Muslims, which being the main purpose of *Zakāt*.

¹ These participants included: (1) Janab Shams Peerzada, (2) Ml. Sultan Ahmad Islahi, (3) Dr. Abdul Azeem Islahi. Shaikh Mehroos Al-Mudarris opined that there is generalisation in the meaning of *Fi Sabilillāh*, Shaikh Dr. Ali Jummah also expressed the same view.

18

Lands on which Agriculture Cess (*Ushr*) and Revenue is Levied ♦

The Islamic Shariah has prescribed the right of poor and destitute in the proceeds of agriculture in the way their rights have been pronounced in *Zakāt*. This head of obligatory charity is technically called as '*Ushr*'. The theologians have declared after their deliberations in the Sixth Seminar the following kinds of land as liable under this category while considering injunctions of the Qur'an and *Sunnah* and the practice of the classical age:

- 18.1 Those lands whose owners voluntarily embraced Islam before the conquest of those territories by Muslims.
- 18.2 The lands in a conquered territory, which have been distributed among Muslims by the state.
- 18.3 Lands granted to Muslims by a Muslim government as *Jāgir* (ownership of land).
- 18.4 All the lands in the Arabian Peninsula, which have already been demarcated as such by the early jurists.

♦ 6th Fiqhi Seminar (Umerabad Tamil Nadu) 31 Dec 1993, 1-3 Jan 1994.

- 18.5 House-site lands converted into agricultural lands while adjoining lands are also *'Ushri*.
- 18.6 All such fallow lands in a Muslim country, which have been made cultivable by a Muslim, while adjoining lands are already *'Ushri* lands.
- 18.7 The following types of lands fall in the category of *Khirāji* (revenue) lands:
- A. Land in a conquered territory, which have been left in the possession of local non-Muslims.
 - B. Lands of a town, the non-Muslim populace whereof have made truce with the Muslim government and have been allowed to retain possession thereof.
 - C. Lands of Muslims, which go over into the ownership of non-Muslims and later on given back in the possession of Muslim subjects.
 - D. The lands granted by a Muslim government as *Jāgir* to non-Muslims.
- 18.8 As a broad principle, Shariah has placed all lands possessed by Muslims in the category of *'Ushri* lands and those in the possession of non-Muslims as *Khirāji*. However, because the *'Ushr* is a type of *'Ibādat* (act of worship) and is, in its essence, a kind of *Zakāt*, as far as Muslims are concerned all their agricultural lands are, basically, to be treated as *'Ushri* lands as abrogating *'Ushr* would be tantamount to abrogation of an act of *'Ibādat*. Hence, unless there is a clear authority of the Qur'ān or *Sunnah* to take any land out of the category of *'Ushri* lands the prudent course would

be to classify all lands in Muslims' possession as '*Ushri* lands.

- 18.9 These unanimous opinions on '*Ushr* and the existing administrative set-up in respect of the status of lands in India according to Shariah, prompted to at the following conclusions.
- A. It is incorrect to hold that all lands in the possession of Muslims in India are neither liable for '*Ushr* nor for '*Khira*ji.
 - B. Lands in India falling in the following categories (C-F) are as per consensus, '*Ushri* lands.
 - C. Lands granted to Muslims by a Muslim government, which continue to be in the possession of Muslims.
 - D. Lands in those regions the people whereof voluntarily embraced Islam even before the establishment of Muslims' rule there.
 - E. Lands in the possession of Muslims since a considerably long time and there being no historical evidence of those having ever been '*Khira*ji lands.
 - F. Those cultivated or fallow lands, which are given to Muslims by the Government of India (or for that matter by any state government). However, in view of some, such lands will be treated as '*Khira*ji lands.
- 18.10 There is a difference of opinion in respect of lands obtained by Muslims either from a non-Muslim Government or from a non-Muslim individual. Some of the participants of the Seminar hold that

all lands in the hands of Muslims in India, irrespective of their origin, are *'Ushri* lands while others hold that the same must be treated as *Khirāji* lands.

- 18.11 However, it is commonly agreed that as a matter of abundant caution all lands should be treated as subjected to *'Ushr*.

19

Deduction of Expenses For determining the *Nisāb* of *'Ushr* ♦

The use of modern methods of agriculture has led to excessive expenditures on farming and agriculture, which generated some confusion regarding calculation of the amount to be paid under *'Ushr*. The Sixth Seminar of Islamic Fiqh Academy has taken up the issue and resolved as follows:

- 19.1 The extra expenses incurred through employing modern means like the use of fertilizers, insecticides, etc. should not be deducted from the cost of total produce obtained.
- 19.2 According to Imam Abu Hanifa and some other Muslim jurists, considering the generality of certain *Āyaat* (verses) of the Qur'ān and some Traditions of the Prophet (pbuh), there is no *Nisāb* (standard deduction) for payment of *'Ushr* on agricultural produce. *'Ushr* will be payable on everything produced from the land, irrespective of its quantity. However, Imam Abu Yusuf, Imam Mohammad and a majority of other jurists, relying on the Prophet's reported saying, hold that there will be no liability of paying *'Ushr* if the total

♦ 6th Fiqhi Seminar (Umerabad Tamil Nadu) 31 Dec 1993, 1-3 Jan 1994.

produce is less than five *Wasaqs* (i.e. less than 653 kilograms). It is also agreed that placing the liability of *'Ushr* in all cases will be hard on small land-owners or in case of the crop getting damaged because of some natural calamity, therefore, following the view propounded by Imam Abu Yusuf and Imam Mohammad (*Sāhibain*) and other jurists, it is held that in case the produce be less than five *Wasaqs* (i.e. less than 653 kilograms), it will be permissible for the land-owner to consume the entire produce himself without paying *'Ushr* (one-tenth). Some participants, however, expressed the view that this may be acceptable only if the produce is less than *Nisāb* and the person concerned has no other means of sustenance.

20

Method of Payment of Revenue (*Kharāj*) and adjusting it against The Government Revenue ♦

Due to the confusion regarding the Islamic concept of *Kharāj* and the present land revenue charged by the government it was felt necessary to seek proper clarification from the 'Ulemā and the participants of Sixth Seminar made out the following points in this regard.

20.1 Some participants of the Seminar hold the view that the obligation to pay *Kharāj* terminates after paying the land revenue (*Lagān*) to the Government.

Some others are of the opinion that *Kharāj* is, in any event, obligatory on all *Kharāji* lands in India. They hold that payment of land revenue to the Government does not absolve the landowner of the obligation of *Kharāj*, and it is incumbent on a Muslim landowner to separate the due quantum from the total product and to spend it on the prescribed heads of *Kharāj*.

♦ 6th Fiqhi Seminar (Umerabad Tamil Nadu) 31 Dec 1993, 1-3 Jan 1994.

Still others opine that the land revenue paid should be adjusted against the due *Kharāj* and the balance be spent as *Kharāj*.

- 20.2 On the question whether *Kharāj-e-Muqasama* will be due on *Kharāji* lands in India or the *Kharāj-e-Muazzaf*, some participants of the Seminar, for the sake of convenience, favour the *Kharāj-e-Muqasama* on all *Kharāji* lands.

But those participants, who are inclined towards holding *Kharāj* as obligation in all events, hold that on all such lands in respect of which it is historically established that after their conquest by Muslims, *Kharāj-e-Muqasama* was levied (as in Gujarat and Rajputana), *Kharāj-e-Muqasama* will have to be paid, and the quantum would be the same as was initially levied. In respect of all other *Kharāji* lands, *Kharāj-e-Muazzaf* will be leviable.

- 20.3 Those favouring *Kharāj* as obligatory in all cases, make *Tauzeef-e-Umri* as the basis and thereby fix one silver dirham in cash per *Jareeb* (i.e. equal to 3 masha of silver, or its value) and one *sa'* (three kilograms and 325 grams) of the produce on *Kharāji* lands yielding usual crops like grains and cotton. On vegetable-growing lands, they fix 5 silver dirhams (or its equivalent currency in use) per *Jareeb*, 10 silver dirhams or its equivalent, in cash per *Jareeb*, on lands adjoining the grape or date groves.

21

Agriculture Cess ('Ushr) on The Produce of 'Ushri Lands ♦

Like *Zakāt*, payment of 'Ushr is also a religious obligation, which relates to produce from lands. The Holy Qur'an has enjoined upon Muslims to pay *Zakāt* out of their clean and lawful earning and to pay 'Ushr out of the yields from the lands.

"يا أيها الذين آمنوا أنفقوا من طيبات ما كسبتم ومما أخرجنا لكم من الأرض"

(O! you who believe, spend out of your clean and lawful earning and out of what you get from the lands. Qur'an 2: 267).

On whether 'Ushr is due on all the produce of lands or some produce are exempted, after studying the general instructions found in the Qur'an and *Hadith* in the matter and considering the papers presented and views put forth by the participants and the respective Committee, the following conclusions were made.

21.1 That 'Ushr will be liable on every produce, including grass and trees, which is grown for the purpose of trade and for developing the land. Hence all grains,

♦ 6th Fiqhi Seminar (Umerabad Tamil Nadu) 31 Dec 1993, 1-3 Jan 1994.

fruits and flowers grown on a land are liable for *'Ushr*. However, the self-grown (wild) grass and trees, not grown with the intention of trade, will be exempted from the liability of *'Ushr*.

- 21.2 Such non-fruit bearing trees, the timber of which is used as fuel or for making furniture or used in the construction of houses, like *Sanoobar*, *Sheesham*, *Saagwan*, *Saakhu*, etc. for the growing of which an *'Ushri* land is set apart and are meant for trade, will be liable for *'Ushr*, either in kind or cash, at the time of their being put to such a use, howsoever long it may take.
- 21.3 However, vegetables grown in the courtyard or in fallow adjoining lands or on the roofs of houses are exempted from liability of *'Ushr*.

22

'Ushr on Lands under Tenancy ♦

The seminarians of the Sixth Seminar resolved the following regarding payment of *'Ushr* on the lands under tenancy:

- 22.1 In case the landlord and tenant both are Muslims, both will be liable to pay *'Ushr* on the produce coming to their respective shares.
- 22.2 In case the landlord is a Muslim and the tenant a non-Muslim, the Muslim landlord will have to pay *'Ushr* on the total produce falling to his share.

♦ 6th Fiqhi Seminar (Umerabad Tamil Nadu) 31 Dec 1993, 1-3 Jan 1994.

23

'Ushr on Fish, Makhana, Silk, etc ♦

The decisions of the Sixth Seminar regarding charging of *'Ushr* on certain crops were as under.

- 23.1 Things cultivated within water, e.g. *Makhaana*, *Singhaada* (water chestnut), etc. are akin to land produce as they cause *Istighlaal-e-Ardh*, hence these are liable for *'Ushr*.
- 23.2 Fish-breeding done for commercial purposes does not fall in the category of land produce but comes under the classification of commercial commodity. Therefore, it will not be liable for *'Ushr* but *Zakāt* will be payable on it.
- 23.3 In case *Shehtoot* (mulberry) is grown on an *'Ushri* land for the purpose of extracting silk therewith and the mulberry leaves are used as food for the silkworms, it is held that *'Ushr* will be liable on such mulberry leaves. Some participants are, however, of the view that such mulberry leaves will not be liable for *'Ushr* but *Zakāt* will be liable on the silk obtained therefrom, like in the case of other commodities liable for *Zakāt*.

♦ 6th Fiqhi Seminar (Umerabad Tamil Nadu) 31 Dec 1993, 1-3 Jan 1994.

24

***'Ushr on the Fruits & Vegetables Grown in Courtyard, Roof-tops, Adjoining Lands & on Waqf Lands* ♦**

The decisions of the Sixth Seminar regarding charging of *'Ushr* on certain fruits, vegetables, etc. were as under.

- 24.1 As the liability to pay *'Ushr* accrues only when a land is in itself an *'Ushri* land, and the land on which a house stands is neither an *'Ushri* nor a *Kharāji* land, hence the vegetable and fruits, etc. grown in the courtyard, on roof-top or on the fallow land surrounding the houses, will not be liable for *'Ushr*.
- 24.2 As for the liability to pay *'Ushr*, it is not necessary that a person should actually own the land, *'Ushr* becomes liable on the produce of the land even if not in the ownership of one. Further, *'Ushr* is leviable on the produce and not on the land as such. Therefore, the produce of a *Waqf* land, be it a general *Waqf* or *Waqf-alal-Aulaad*, will be liable for *'Ushr*.

♦ 6th Fiqhi Seminar (Umerabad Tamil Nadu) 31 Dec 1993, 1-3 Jan 1994.

25

The Issues related to *Awqāf* ♦

Establishment of Endowments (*Awqāf*), with some welfare purpose in view, has been considered a very pious act in Islam, which almost enjoys a perennial reward from the heaven. There exist elaborate guidelines in the Islamic jurisprudence regarding establishment, maintenance and governing Endowments in a Muslim society. However, several new issues have emerged in the past centuries especially in countries where the Muslims were politically dominant some time back and now have become a minority, such as in India. Therefore, the need was felt to clarify various doubts on the matter and provide explicit directives pertaining to *Awqāf* properties spread in various parts of the country. The theologians propounded the following guiding principles as regards Endowments in their Tenth Seminar held at Mumbai.

25.1 It is indeed an immensely rewarding act and a *Sadqa-e-Jaaria* (perpetual charity) in Islam to do deeds of welfare and to endow (*Waqf*) land, property and riches for charitable purposes. That is precisely why the Muslims all over the world, even in the remotest parts of the globe, endow land, property and riches for welfare purposes. The history of Islam

♦ 10th Fiqhi Seminar (Hajj House Mumbai) 24-27 Oct 1997.

and Muslims is considerably old. The Muslims have dwelt in different parts of the country for centuries together. In this perspective, a number of Muslim *Awqāf* have been operative on religious, reformatory and charitable lines in almost every nook and corner of the country. It is indubitably the foremost responsibility of the Muslims of India and that of the Indian government to protect these *Awqāf*, to work for their development and expansion, to spend income of the '*Awqāf*' in accordance with the intentions of the Endower (*Wāqif*) and the last but not the least to get the *Awqāf* properties liberated from the clutches of usurpers.

- 25.2 The Islamic viewpoint on *Awqāf* is that they are permanent and they certainly should not be sold or transferred under normal circumstances. In this regard, Prophet Muhammad (pbuh) said: "It can neither be sold off, nor gifted away and nor can be inherited"

Therefore, efforts should be made keeping it in mind that the *Waqf*, apart from maintaining and looking after its properties, ought to reap profits and grow. In this connection, appropriate rules and laws need to be framed which could ensure complete protection and sanctity of the institution called *Waqf*; besides the utility, enhancement and growth of the *Waqf* taking due care of the objectives and intentions of the endowers (*Wāqifs*).

- 25.3 We notice that the mosques garner greater sanctity and veneration in comparison to other *Awqāf*. In this regard, the sale and transfer of mosques is not valid

under any circumstances. It is strictly prohibited. Even if the mosque happens to become deserted and forsaken with *Salaat* (Prayer) not being performed there, still the piece of the land where such a mosque stands remains a mosque, whatsoever be the situation. Moreover, it still commands the sanctity and veneration of a mosque. Sincere efforts ought to be carried out to reconstruct or repair the mosque and rehabilitate it afresh.

Allah says:

"وَأَنَّ الْمَسَاجِدَ لِلَّهِ فَلَا تَدْعُوا مَعَ اللَّهِ أَحَدًا"

And that the mosques are for Allah; Therefore, do not call upon anyone else in them along with Allah. (Jinn: 18)

"إِنَّمَا يَعْمُرُ مَسَاجِدَ اللَّهِ مِنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ"

Only he should visit or tend God's houses of worship that believe in God and the Last Day. (Tauba: 18)

25.4 It is an enormously sinful act and a cruelty of the worst kind to prohibit people from offering Prayers in a mosque.

Allah reveals:

"وَمَنْ أَظْلَمُ مِمَّنْ مَنَعَ مَسَاجِدَ اللَّهِ أَنْ يُذَكَرَ فِيهَا اسْمَهُ وَسِعَى فِي خَرَابِهَا"

And who could be a greater wrongdoer than the one who forbids the mention of Allah's name in places of worship and strives for their ruin? (Baqarah: 114)

In the eyes of Shariah, "Once a mosque is always a mosque", no matter for how long period the Muslims have been disallowed from offering *Salat* inside the mosque or it has been forcefully usurped or the mosque building have been demolished.

25.5 According to the Shariah, it is practically an act of tyranny to stop the offerings of *Salat* in archaeologically protected mosques.

The Almighty says:

"ومن أظلم ممن منع مساجد الله أن يذكر فيها اسمه وسعى في خرابها"

And who could be a greater wrongdoer than the one who forbids the mention of Allah's name in places of worship and strives for their ruin? (Baqarah: 114)

25.6 During the tragic time of partition, a sizable part of Muslims from India (especially from Punjab, Haryana, Delhi, and Western U. P.) migrated to Pakistan leaving behind various kinds of huge *Awqāf* (mosques, madrasas, monasteries, graveyards, inns, etc.) in these areas. The local Muslim populace, whatever their number is, should take the responsibility of maintaining and protecting these *Awqāf* making them profitable and functional. Also, the respective Waqf Boards should shoulder responsibilities in protecting and looking after the *Awqāf* in places and localities, which have been eventually deserted by the Muslims. As a corollary to it, the Muslims from neighboring localities need to strive for their protection.

25.7 In case of those *Awqāf*, excluding mosques situated quite distant to the nearest Muslim habitation, if appears that it would be justifiably difficult to rehabilitate and maintain them besides failing in complying with the objectives laid down by the *Waqif* (endower) and if fear of usurpation of the *Awqāf* property is looming large, then it would be correct and advisable to sell off those *Awqāf* and establish the Endowments of similar nature at other places under the above-mentioned circumstances provided that:

- (a) It has been thoroughly investigated that those localities or places have been wholly deserted by the Muslims and there exists no probable chance of the Muslims resettling in these places once again.
- (b) The endowed property is sold off at rates, which are at par with its market value. Of course, it should not be sold off at such a meager price, which cannot be estimated by experts.
- (c) The Caretaker (*Mutawalli*) or the officer-in charge of the Endowment should not sell off the Endowment to his close relatives, hoping to reap some sort of benefit from the deal. In this way, he should also not strike a deal with a person whom he is indebted to.
- (d) The endowed property should be most preferably bartered with another property

instead of purchasing it for a monetary sum. However, if the latter course could not be adopted due to any legal or practical impediment, then the immovable property should be purchased out of the proceeds as early as possible for establishing the alternate *Waqf*.

- (e) The permission for the exchange or sale of *Waqf* should be given only after a thorough investigation of the conditions of the transaction by a Shariah Qazi or a Shariah Committee of *Awqāf*, comprising of pious and God-fearing scholars, Muslim think-tanks and jurists professionally acquainted with the laws appertained to *Awqāf*. The permission of the respective Waqf board or the Waqf officer is not enough for the sale or exchange of the *Awqāf* properties from the Shariah point of view. The permission given by the Waqf Tribunal would be binding and shall hold good from the Shariah angle, once it has sought the opinions of at least three renowned *Muftis* (religious scholars) and acted in accordance with their advices.¹
- 25.8 a) The proceeds of deserted and desolate *Awqāf* should be spent as per the intentions and objectives of the endower as laid down in the Deed of Endowment (*Waqfnaama*). If such

¹ It is worth mentioning here that the aforesaid properties, viz. shops, houses, land, etc. which are sold off and the new shops, houses, land and property purchased against them shall also fall under the same objectives of the *Waqf* as had been in the first case.

heads no longer exist in which the money can be spent the nearest channels should be considered. However, it would be unfair and unjust to spend the proceeds on other heads being unmindful of the endower's intention and motives.

- b) In case the deserted and desolate *Awqāf* are to be sold off, then it would be incumbent to establish other *Awqāf* in place of them.

25.9 It would be obviously right and permissible to use the surplus *Waqf* land endowed to the mosque in establishing a madrasa or a school for religious education rather than spending frugally on further constructions and expansion of the mosque which it does not require for the time being nor at a later stage in near future, provided that:

- (a) The mosque remains deserted and the establishment of a madrasa or school might possibly act as a catalyst in making the mosque functional and rehabilitated once again.
- (b) There exists an enormous fear of forceful usurpation of the surplus *Waqf* land endowed to the mosque and the establishment of a religious madrasa or school could bring the mosque out of such a danger.
- (c) There is hardly any permanent or proper bandobast in sight for the establishment of a religious madrasa or school for Muslim children in a place or locality where a mosque

does exist. However, before taking such a step, the consent of the *Mutawalli* (Caretaker) or the managing committee of the mosque in question must be obtained. Furthermore, it would be certainly better if the mosque committee itself goes ahead and makes adequate arrangements for such a Madrasa or school.

- 25.10 The endowed lands for the mosque, which are supposed to generate income for the mosque, can be given away at an appropriate rent for the establishment of institutions imparting religious, contemporary or technical education. Nevertheless, the agreement and terms should be finalized taking due care to ensure that the ownership rights of the mosque are not jeopardized.
- 25.11 Those mosques which have a much larger income than their total expenditures and whose incomes are going on accumulating endlessly year after year and there is virtually no probability for the mosque concerned to utilize such an accumulated surplus wealth in the near future, then under such circumstances, the surplus proceeds of the mosque should be diverted to other places (where there is a need) for constructing a mosque or to help the dilapidated and needy mosques because even today there are numerous dwellings in India which are devoid of any mosque or religious school. The Muslims crave to hear the call for Prayer (*Adhan*) in such places. The excess funds of the rich mosques ought to be utilized for building mosques in such areas.

- 25.12 In addition to this, an important head of expenditure from the funds obtained from the lands and properties endowed for the mosque comprises of the *Imams, Muazzins* and other workers. The participants of the Seminar do feel that in certain instances, the *Imams, Muazzins* and others do not get adequate salaries despite the mosques having sufficient income. Henceforth, it is urged to the members of the managing committees of mosques to provide sufficient honorarium and perks to the *Imams, Muazzins* and other workers of the mosque.
- 25.13 The surplus income of other *Awqāf* which they no longer need for the time being or in the near future, the security and protection of which is a growing headache for the *Mutawallis* and the fear of usurpation looms large over it from the government machinery or from unrighteous or unscrupulous persons, then the surplus amount should be spent for that particular purpose only. To site an example, the surplus income of the madrasas needs to be spent for the causes of madrasas alone, that of inns for inns and the like.
- 25.14 In a situation where the income of a *Waqf* is quite sufficient, it is not suitable to sell it off just for the purpose of generating more and more income because there is ample risk of loss of the original *Waqf*. Albeit, if the income generated out of the endowed property is so insufficient and meager that even the necessary expenses of the *Waqf* property remain unfulfilled and funds need to be

borrowed to make it functional and, moreover, there lies no other alternative in question to enhance its income under such grim circumstances, the endowed property might be sold off under the conditions mentioned in Clause 7 (b, c, d & e) above to buy a more beneficial and profitable property. However, if the Endower is alive, his consent should also be obtained before striking a deal.

- 25.15 The *Awqāf* buildings which have become old and are in a dilapidated condition and the *Awqāf* does not have enough funds of its own to repair it, neither is there any promising chance in the near future, then the *Mutawallis* of the *Awqāf* can, enter into an agreement with some builder with a precondition that he should construct the building and then keep the whole building or a part of it on rent for a certain defined period of time. In this way he would get the benefits of his investments. Nonetheless, it would be of course, inappropriate to pass off the ownership rights of one or two storeys of a multi-storied building to the builder forever.
- 25.16 In case, there is a paucity of funds for the construction of a boundary wall or fence around a graveyard, for the sake of its protection, shops can be allowed to be constructed in it's premises. However, the passage to these shops should be from outside the graveyard. For this purpose, the rent can be collected in advance and the money can be used for constructing the shops. The income from these shops should be utilised for the security

and other requirements of the graveyards. However, it should be initially ensured that the construction of the shops might not affect those graves whose identities still exist.

- 25.17 The Seminar requests the Secretary General of the Islamic Fiqh Academy, Qazi Mujahidul Islam Qasmi, to form a committee which would present a memorandum to the Parliamentary Committee formed by the Government of India for Muslim *Awqāf* for recommending necessary amendments in the *Waqf* Act along with valuable suggestions. The committee ought to execute its plans as soon as possible and represent the Academy in this connection.

26

The Creation of *New Awqāf* ♦

Waqf has been given enormous importance in the Islamic history. It is the institution of *Waqf* by which various great cultural, literary and public welfare tasks have been rendered successfully. Keeping these facts into consideration, the Fourteenth Seminar of Islamic Fiqh Academy proposes the following recommendations.

- 26.1 Effective measures have been taken up to get the Muslim *Awqāf* in India rid of the illegal and illegitimate government or non-government control, to expand the *Awqāf* property, to make them profitable and to invest the *Awqāf* funds while taking care of the due provisions of Shariah in view of the current implications.
- 26.2 *New Awqāf* should be created in order to fulfill the needs and the aspirations of the widows, divorcees, orphans, the sick and the needy.
- 26.3 'Educational funds' should be established to look after the needs of the needy students and to extend financial help to them in the form of scholarships and stipends.

♦ 14th Fiqhi Seminar (Darul Uloom Sabeelussalam Hyderabad) 20-22 June 2004

- 26.4 'Fund for religious institutions' should be established for the betterment of religious centres and the Islamic Madrasas.
- 26.5 Philanthropists should participate wholeheartedly in this endeavour to accomplish the above-mentioned objectives in diverse fields and thus become entitled to the perennial Charity.

27

Issues related to *Slaughtering* ♦

The slaughtering of permissible animals for day today consumption or for religious offerings remains one of the key aspect of Islamic worship. Islam prescribes a distinct set of guidelines for proper slaughtering. However, due to general ignorance and complexities of modern life several issues have emerged in this regard and the Seventh Seminar of the Islamic Fiqh Academy provided suitable guidelines for the permitted course of action.

The First Resolution:

- 27.1 Literally *Zabih* means to perform a surgical operation and in Shariah it means to cut the fold and breath pipes and both the jugular veins of an under control animal or to injure or inflict wound on any part of an animal who is not under control for slaughtering.
- 27.2 *Zabih* is of two kinds *Zabih Ikhtiyari* and *Zabih Ghair Ikhtiyari*. In the first kind of *Zabih* all that four arteries or most of them are severed and it happens with those animals who are under the full control of the slaughterer at the time of *Zabih* (slaughtering according to the Islamic tenets). This sort of

♦ 7th Fiqhi Seminar (Bharuch Gujarat) Dec 30, 1994 Jan 2 1995

slaughtering is generally done to the reared animals with the exception that the animal may somehow become out of control at the time of slaughtering. In the second type of slaughtering, wound is inflicted on any part of the body of the out of control animal and let the blood flow from the wound. This sort of slaughtering is done on untamed (hunting) wild animals who are not under the control of human beings with the exception that a wild animal may be caught and tamed or is somehow caught alive.

27.3 Common conditions for both types of slaughtering are:

- (i) The slaughterer should be a Muslim or *Ahle Kitāb* (the follower of some revealed book).
- (ii) He should be sane.
- (iii) Name of Allah is recited at the time of slaughtering.
- (iv) No other name should be included with the name of Allah.
- (v) The animal should be alive at the time of slaughtering.
- (vi) The animal should die only on account of slaughtering.
- (vii) The weapon should be sharp edged.

Special conditions regarding *Zabḥ Ikhtiyāari*:

- (a) To recite *Tasmia* (In the name of Allah the compassionate, the merciful) on the animal set for slaughter.
- (b) To sever the particular arteries.
- (c) There should not be much delay between the recitation of *Tasmia* and *Zabih*.

Special conditions regarding *Zabih Ghair Ikhtiyaari*:

- (a) The hunter should not be in his *Ihraam*.
- (b) The animal belonging to *Haram* should not be hunted.
- (c) The hunter bird or animal should be a trained one.
- (d) *Tasmia* should be recited while releasing the hunter bird or animal or while throwing the spear or arrow.

27.4 The occasions for *Zabih* under control and *Zabih* out of control are quite different. The out of control type of *Zabih* is permissible only when the *Zabih* under control is not possible. Therefore, the permission of *Zabih* out of control in the place of *Zabih* under control is not unanimous.

The Second Resolution:

27.5 The qualifications of a person performing the act of *Zabih* (the slaughterer) according to Shariah are that he should be sane and major. In case of his

being a minor, he should be wise and sagacious and last but not the least he should be either a Muslim or the follower of some divine/revealed book (*Ahle Kitaab*).

- 27.6 By the follower of any revealed book means that he should follow one of the revealed/divine books testified by the Holy Qur'an. The Jews and Christians are such persons in the present age.
- 27.7 The *Zabiha* of the Jews and Christians will be lawful with the exception that it is proved beyond doubt that such a person is heathen and does not believe in Allah.
- 27.8 The *Zabiha* by a Qadyani will in no case be lawful even if he calls himself Ahmadi or Lahouri.
- 27.9 It should be made clear that the conditions set by Shariah should be positively found in *Zabih* even though the slaughterer is a Muslim or a follower of some revealed book. Hence, all those conditions in which an animal is slaughtered directly or by means of some machine in such a way that it cannot be dubbed as *Zabiha* according to Shariah, the animal thus slaughtered will neither be *Zabih* nor will be legal for consumption. Its examples are to shoot and kill the animal, to burn the places of *Zabih* by electric current or by wounding some part of the body and let the animal die by the flow of blood from that wound or other means similar to these.

The Third Resolution:

- 27.10 According to the Islamic Shariah the name of Allah should be uttered at the time of slaughtering and if

the animal is slaughtered in the name of some one other than Allah it will not be *Halāl* (Permissible).

- 27.11 If an animal is slaughtered without uttering the name of Allah, such thing happens only either knowingly or by forgetfulness. The slaughter will be lawful if *Bismillah*, is simply forgotten to recite. But if it is deliberately not recited, such slaughter, according to the majority of jurists, will not be permissible.
- 27.12 Reverend Imam Shafai holds that if *Bismillah* is not read as a matter of disdain, the slaughter (*Zabiha*) will not be lawful. But if the reason is not disdain and *Bismillah* is not over looked intentionally, such slaughter will be lawful because according to him it is *Sunnah* to say "*Bismillah*".
- (a) Be it clear that the majority of Islamic jurists hold the utterance of *Bismillah* as obligatory while Imam Shafai thinks it as "Traditional" (*Masnoon*). However *Tasmia* (recitation of *Bismillah*) is obligatory or traditionally every Muslim is generally expected that he will not perform *Zabh* by intentionally not reciting the name of Allah. It is not our duty to ascertain whether a Muslim while performing *Zabh* deliberately omitted *Bismillah*? Therefore, the *Zabiha* by every Muslim should be considered as lawful.
- (b) It should be clear that, while slaughtering, the recitation of the name of Allah is obligatory for each animal. Therefore, if the act of slaughtering is performed several times the recitation of Allah's name will also be recited as many times and if the slaughtering is done only once, the name of Allah will be recited only once, for example, an animal is being slaughtered after

reciting “*Bismillah*”, but before the act of *Zabih* is complete, the animal somehow gets out of control and runs away. Now, if it is caught and again put down for *Zabih*, in this case, *Bismillah* shall be recited once again. In *Zabih Ikhtiyaari* every time when an animal is slaughtered and *Bismillah* is read, there should be full knowledge and determination of the animal, which is being slaughtered, and if some other animal instead of the predetermined one is slaughtered, it will not be lawful.

- (c) Sometimes while slaughtering an animal more than one person join this act, for example, two hands of two different people are gripping the handle of the knife, or one hand of a weak person and on his hand the hand of a stronger person, in such case both these persons will have to recite the name of Allah, however, the persons holding the head or legs or body of the animal will not be considered as participants in slaughtering.

Fourth Resolution:

- 27.13 Now-a-days it is becoming a general practice that before putting the animal to slaughter, they are made unconscious by electric shock or some other means supposing that it is a way of mitigating the pain of the animal. This Seminar does not agree with this presumption and holds that the better way is to complete the act of *Zabih* without making it unconscious.
- 27.14 But, in case this practice is in vogue somewhere, and the animal is slaughtered only after rendering

it unconscious and it is also fully certain that the animal has become only unconscious temporarily by the electric shock or by some other means and is not dead, and if it is ascertained diligently that the electric voltage is adjusted only to render the animal unconscious, in this case if such an unconscious animal is slaughtered, the *Zabiha* will be lawful.

28

Applying Modern Methods of Medical Treatment during a Fast ♦

- 28.1 During the fast the medicine of heart disease is placed under the tongue. If its particle and the saliva mixed with the particles are completely avoided to be swallowed them it would not invalidate a fast.
- 28.2 If inhaler is used for the treatment of Asthma it will invalidate the fast.
- 28.3 The medicines inhaled in the form of steam whether through the mouth or the nose or through a machine or by any other means, will invalidate a fast.
- 28.4 The medicine administered through injection intervenes or in the flash whether for medicinal purpose or for nutrition would not invalidate the fast. But it is abominable to inject for the purpose of nutrition or diet.
- 28.5 Administering glucose does not invalidate a fast provided it is administered for some valid reason. Taking glucose without a valid reason is undesirable.

♦ 17th Fiqhi Seminar (Burhanpur – M.P) 5-7 April 2008.

28.6 a) If the medicine is applied deep into the hind opening it will invalidate the fast whether the medicine is in liquid form or solid.

b) Applying medicine on the warts of pile, does not invalidate the fast, but it should be used in extreme conditions only.

c) If a medical apparatus is inserted into the hind opening to test a stomach disease, it does not invalidate a fast, but if it has some medicine or any wet substance on it, then it will invalidate the fast.

28.7 a) If medicine is applied to the outer portion of the vagina it will not invalidate the fast. But if it is applied to the inside portion it will invalidate the fast.

b) Applying medicine or inserting tube in to the male organ does not invalidate a fast.

c) If medical apparatus is inserted in to the uterus to check a disease and medicine or some other substance in on it, it will invalidate the fast.

Note: Ml. Sabahuddin Malik has dissented on the issue noted at no 2.

29

Starting point of a Journey ♦

- 29.1 If a person sets out on a journey to go to a certain place in the town, he may cover any remote distance but if he intends to remain within the limits of the town he will not be counted a way farer. He will there fore, not be entitled to avail the relief that relates to the travel distance under the Shariah.
- 29.2 One who leaves his home to go out of the town with an intent to travel and to offer shortened (Qasr) prayers, he will be treated a traveler and allowed to offer shortened prayers and not to observe the fast as laid down by the Shariah.
- 29.3 In the smaller town the travel distances as per the Shariah norms..... Would be counted from the point the town limits end ie if 48 miles are covered from this point then he will be treated as a way farer.
- 29.4 In the larger towns where habitations cover miles together from which point the distance of travel under the Shariah would be counted? There are two points of view on this issue. Most of the scholars are of the opinion that the distance of 48 miles will be

♦ 17th Fiqhi Seminar (Burhanpur – M.P) 5-7 April 2008.

counted from the *Muhalla* (locality) one sets out on his journey. There is consensus on the point that shortened prayer (*Qasr*) will be offered only when one goes out beyond the town limits and while returning the shortened prayers will be offered till the traveler is still and side the town limits.

30

Shariah command convening the place of employment ♦

- 30.1 It depends upon the intention of a person to raise a personal residential accommodation during a long stay at his place of employment or business so it will be treated as his real home because there may be more than one real home. Therefore one has to offer full prayer (four Rakats) there.
- 30.2 One who does not build residential accommodation at the place of employment or business but lives with his family in a rented house or the accommodation provided by the employer, with an intention to live there permanently, it will be counted his real home and he will offer full prayers there.

♦ 17th Fiqhi Seminar (Burhanpur – M.P) 5-7 April 2008.

31

Rami Jamar ♦

- 31.1 Hajj is one of the fundamentals of Islam. This obligation is to be performed once in a life time. A Haji (Pilgrim) should therefore follow the superior and the masnun (as practiced by Allah's Messenger PBUH) way of the pilgrimage. He should observe the maximum circumspection in it. This point should also be kept in mind that there is ample time to perform Rami during the three days (10,11,12 Zul Hijja) ie every day till the appearance of true down the next morning. So the Haji should choose an appropriate time for Rami keeping in view their convenience. They will not face difficulty and it will also help averting mishaps. Most of the mishappenings take place because of undue haste and ignorance concerning the procedure of the ritual.
- 31.2 It is undesirable to perform Rami on 10th Zul Hijja before the sun rise and after the true down. But the ailing weak, woman and elderly pilgrims may do so.

♦ 16th Fiqhi Seminar (Muhazzabpur Azamgarh) 30 March, 1-2 April 2007.

- 31.3 It is not permissible to perform Rami from the mid night of the 10th Zul Hijja as the scheduled time for the performance of Rami does not commence at that point of time.
- 31.4 On 11,12 Zul Hijja, time for Rami commence after the sun is on the wane and continues till the true down of the next morning. The pilgrims should perform the Rami during this time. Those offering Hajj Faradh should be specifically particular about it. However under severe compulsions if a pilgrim performs Rami before the declining of the sun, he would not be liable to pay Dam (expiation) as per the opinion of Imam Abu Hanifa.
- 31.5 Keeping in view the Multitude of pilgrims these days, it would not be undesirable if a pilgrim performs Rami after the sun set.
- 31.6 If a pilgrim stays at Mina after sun set he will not be required to perform Rami on 13th of Zul Hijja. But if he stays there till the appearance of true down of the 13th morning he will have to perform the Rami that day also.

32

Staying at Mina ♦

- 32.1 It is masnun to stay at nights in Mina during the Mina days. The pilgrims must not deprive themselves of an important Sunnah by staying outside Mina just for the sake of their comfort.
- 32.2 However, if for want of accommodation or the arrangements made by the administration they have to stay outside Mina then they are not to be blamed.

♦ 16th Fiqhi Seminar (Muhazzabpur Azamgarh) 30 March, 1-2 April 2007.

33

Which place will hold credibility during the days of offering sacrifice?♦

One who makes some one as Vakil (agent) and he is at a particular place but the sacrifice is to be offered at some other place; then the time of beginning and termination of the days of sacrifice will be determined where the sacrifice is to be offered and the true dawn of 10th Zil Hijjah has also dawned on it: so.

(A)If 10th Zil Hijjah has not dawned where the person is presently by residing, the sacrifice on his behalf could not be offered, even if 10th Zil Hijja has began where the sacrifice is to be offered.

(B)If the sun on 12Zil Hijja has set where the person on whose behalf the sacrifice is to be offered but 12th Zil Hijja is still not over where the sacrifice is to be offered, the sacrifice on ones behalf could be offered.

(C)If 12th Zil Hijja is not yet over where the person on whose behalf the sacrifice is to be offered but this date is over where the sacrifice is to be offered, offering sacrifice will not be proper there.

Under “A” the following Ulama have dissented:

33.1 Mufti Rasheed Ahmad Faridi, Mufti Abdul Wadood Mazahari, Mufti Jameel Ahmad Naziri, Mufti Mohd.

♦ 19th Fiqhi Seminar (Hansot - Gujarat) 12-15 Feb 2010

Usman Guraini, Ml. Abdur Rab Azmi, Mufti Shaukat Sana Qasmi and Mufti Nematullah Qasmi (Khagaria). According to them offering sacrifice would be valid under such conditions. However, some of them were of the opinion that it would be better if sacrifice is not offered in such an eventuality.

- 33.2 Qazi Mohd Kamil Qasmi and Ml. Ihtesham (Deoband) were of the opinion that the time of the place where the person on whose behalf sacrifice is to be offered will hold credence. Mufti Salman Palanpuri disagreed with the contents noted under (B) according to him sacrifice would not be valid under such circumstances.

C. Social Issues

- 34 Rights of the Bride, the Bridegroom and the Guardians in *Nikāh*
- 35 *Nikāh* by Telephone, Video Conferencing and Internet
- 36 *Nikāh* by Force
- 37 Family Parity (*Kufū*) in Marriage
- 38 Marriage on Conditions
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- 40 Position of Demanding Dowry from the Bride's Family
- 41 On Divorce in a State of Intoxication (*Talāq-e-Sakrān*)
- 42 Inheritance of Agricultural Property by Muslim Women
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- 45 Women's Employment
- 46 Divorce granted by a Court of Law in a Non Muslim Country

34

Rights of the Bride, the Bridegroom & the Guardians in *Nikāh*♦

When a marriage gets solemnized, four parties are basically involved: The bride, the bridegroom and their respective guardians. Consequently, the question of their nascent rights on the occasion of marriage arises, especially when there is difference of opinion between any guardian and his ward regarding accepting some one in the marriage. Therefore, the Shariah makes these mutual rights explicit for one and all. However, due to certain seeming ambiguities of the present time, the Eleventh Seminar of Islamic Fiqh Academy redefined them particularly in the context of Indian society. The seminarians resolved as follows.

- 34.1 As per the tenets of the Islamic Shariah, the 'Guardianship' in *Nikāh* (marriage) means to have an authority of getting someone's *Nikāh* conducted. It has two facets: Authoritative guardianship and voluntary guardianship. The former does not depend upon the consent of marrying a girl or a boy whereas the latter does so.
- 34.2 According to Shariah, the *Wali* (Guardian) ought to bear the following qualities: Mental soundness, maturity of age, independent status, having right in inheritances, and should be a Muslim. The order

♦ 11th Fiqhi Seminar (Patna Bihar) 17-19 April 1999.

of guardians would be similar to that of the paternal relationships in inheritance.

- 34.3 Every person who is mentally sound and has attained puberty, irrespective of being male or female reserves the right to conduct his/her own *Nikāh* himself/herself. On the contrary, one who has not attained puberty or mentally unsound, the right to get his *Nikāh* conducted goes to his guardians. In this regard, there is absolutely no difference between a male and female.
- 34.4 A sane adult girl holds the right to enter into her *Nikāh* without the consent of her guardian. Albeit, it would be preferable if the *Nikāh* is performed with the mutual consent of the girl and her Guardian.
- 34.5 If a sane adult girl does not care about the family parity and the desired standard of *Mehr* (dower) in *Nikāh*, then her guardians shall have the right to get her separated through a *Qāzi* (judge).
- 34.6 The *Nikāh* of a girl, married off by her father or grandfather before she had attained puberty, stands valid indubitably. However, in case she does not like it because her father or grandfather did it for self gains or in a reckless manner or indeligerly or her guardian is a known *fāsiq* (a Muslim who does not perform his religious duties and cares a damn about them), then she has the right to get herself separated through a *Qāzi* (judge).

- 34.7 The *Nikāh* conducted by guardians other than the father or grandfather would also be duly valid. Nevertheless, if the girl is unsatisfied with it, she may separate herself through a *Qāzi* (judge) once she attains puberty.
- 34.8 A virgin girl must exercise her right to puberty at the time she attains that age provided she is aware of her *Nikāh* before attaining puberty besides having the knowledge of Shariah. In circumstances other than these, she shall hold this right until she comes to know of her *Nikāh*.
- 34.9 A consummated (deflowered) girl shall enjoy this right (right to puberty) until she expresses her consent, either in clear words or with gestures. Moreover, she would continue to enjoy this right until she comes to know of this issues of her *Nikāh*. In case there are more than one guardians having equal status, the *Nikāh* performed by anyone of them shall hold good.
- 34.10 If in the presence of a guardian relatively closer, a distant guardian conducts the *Nikāh* of a minor boy or a girl, the validity of the *Nikāh* shall depend out rightly upon the permission of the closer guardian. Nonetheless, if it is not feasible to know the opinion of the closer guardian for the time being and there exists a fear of losing the apt family parity, then the *Nikāh* conducted by the distant guardian would be perfectly valid.

35

Nikāh by Telephone, Video Conferencing and Internet ♦

The theologians in their resolution on the occasion of Thirteenth Seminar of IFA specified as regards marriage solemnized on telephone, by video conferencing or on Internet that:

The matter of *Nikāh* is more complex than a sale deal as the former involves an aspect of *Ibādat* and requires two witnesses. Therefore, direct proposal of marriage and pronouncement of consent on Internet, by video conferencing and telephone is not reliable. However, *Nikāh* will be valid in case an attorney is appointed for *Nikāh* proceedings on these electronic media and the two parties make proposal and pronounce consent before their witnesses on behalf of the attorney. In such an arrangement the witnesses should have been familiar with the person appointed as attorney or his name along with his father's name and residential address should be mentioned at the time of proposal and consent.

♦ 13th Fiqhi Seminar (Jamia Syed Ahmad Shaheed Katauli) 13-16 April 2001.

36

Nikāh by Force ♦

The nature of Islam does not permit any coercion and it distinctly provides right to marry a person of choice. However, the parents and family members exert to much pressure in Indian society, hence, the question arises how much right they enjoy in marrying their sons or daughters to an appropriate match? In the Thirteenth Seminar of the academy this question was thoroughly dealt with and the following conclusions were drawn.

- 36.1 On the attainment of adulthood Shariah gives to a boy or a girl the right to choice in the matter of marriage and to make decisions about themselves. This individual freedom is one of the characteristics of the Islamic Shariah. A number of modern communities, in the east and west, who have given due rights to women, are much indebted to the Islamic teachings in this regard.
- 36.2 It will be quite unfair on the part of a Guardian to force his/her ward to take in marriage a person whom he or she does not like. Guardian's insistence on his choice and using coercive means to make his ward yield, amounts to violation of individual rights which Shariah never approves of.

♦ 13th Fiqhi Seminar (Jamia Syed Ahmad Shaheed Katauli) 13-16 April 2001.

- 36.3 It is better for young boys and girls to prefer the marriage proposal offered by their Guardians. This is because the Guardians, due to the love and affection they give to the youngsters and the experiences of life they possess, are expected to have taken into consideration the interest of the young boy or girl for whom a matrimonial alliance is being sought.
- 36.4 The execution of marriage contract pertains to the pronouncement of consent at the time of the *Nikāh* ceremony. The moment an adult boy or girl pronounces their consent the *Nikāh* is solemnised.
- 36.5 In case a Qazi or a legal body is convinced of the coercive means resorted to by a girl's guardian to force her for marrying a male she does not like and has been made to pronounce consent under duress and the girl does not agree to continue this alliance and demands separation while the husband is not prepared to be separated from her, the Qazi or a legal body has the right to nullify the *Nikāh* in order to save the girl from injustice.

37

Family Parity (*Kufū*) in Marriage♦

The matter of *Kufū* (Family Parity) acquires central importance for marriage according to the Islamic teachings. In the Eleventh Seminar of Islamic Fiqh Academy held in Bangalore the following understanding was developed as regards *Kufū* especially in the context of Indian Muslim society.

37.1 Islam looks at the entire mankind with equal respect. It never differentiates between a man and a man. It gives equal preference and respect to all human beings.

The Almighty Allah says:

"يا أيها الناس إنا خلقناكم من ذكر وأنثى وجعلناكم شعوباً وقبائل لتعارفوا إن أكرمكم عند الله أتقاكم"

O mankind! We created you from a single (pair) of a male and female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. (Hujrat: 13)

Therefore, from the Islamic point of view, it is impermissible and disgraceful to divide human

♦ 11th Fiqhi Seminar (Patna –Bihar) 17-19 April 1999.

beings on the basis of caste, creed, race and colour and to categories them as superior and inferior ones.

Allah says:

"ولقد كرّمنا بني آدم"

We have honoured the sons of Adam. (Al-Isra: 70)

37.2 Islam projects the concept of Islamic brotherhood in very clear terms.

Allah says:

"إنما المؤمنون إخوة"

The believers are but a single brotherhood. (Hujrat: 10)

Prophet Muhammad (peace be upon him) said:

"المؤمن للمؤمن كالبنيان يشد بعضه بعضاً"

A believer for another believers is like a cemented building in which every part strengthens the other one.

He further said in another Hadith:

"مثل المؤمنين في توادهم وتراحمهم وتعاطفهم كمثل الجسد الواحد إذا اشتكى منه عضو تداعى له سائر الجسد بالسهر والحمى"

The believers in their love, mercy and sympathy towards each other are like a single body, if any part of it being

subjected to any problems the whole body screams for it by awakening and fever.

Hence, every Muslim is a brother of other fellow Muslims. And to underestimate anybody or exhibit superiority against anybody on the ground of caste and creed or to feel pride over hereditival lineage, race and language is nothing but a clear and apparent violation of Islamic teachings.

Prophet Muhammad (peace be upon him) further said:

"لا يجل لمسلم أن يحقر أخاه المسلم، كل المسلم على المسلم حرام
دمه وماله وعرضه"

It is not permissible for a Muslim to hate his Muslim brother and encroaching upon his blood, property and dignity is prohibited for him.

37.3 By means of *Nikāh*, two strangers, a man and a woman vow life-long companionship and become faithful, trustworthy companions and a source of comfort for each other.

Allah says:

"هن لباس لكم وأنتم لباس لهن"

They are your garments and you are their garments.
(Baqarah/187)

He further says:

"ومن آياته أن خلق لكم من أنفسكم أزواجاً لتسكنوا إليها وجعل بينكم مودة ورحمة"
بينكم مودة ورحمة"

And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your hearts.

(Rūm/21)

In fact, Islam aims at making lasting and strong bonds. That is why, it enjoins such instructions and guidelines so that *Nikāh* can achieve its objective thoroughly and spouses may share a blissful life up to their last breath.

- 37.4 Family Parity is in fact similarity and likeness. The parity or proximity between the spouses in their mental wavelength, social status, life styles, religiosity and other such parameters ensure to a large extent, a happy marital life and a firm nuptial ties. On the other hand, unequal or unmatched marriages are found to be unsuccessful, in general. Moreover, the disastrous effect of a failed marriage affect the couple seriously, further permeating down to their respective families and clans. That is why; the Shariah has objectively taken into account the Family Parity in the matters of *Nikāh* in particular.
- 37.5 A *Nikāh* performed with the mutual consent of a major Muslim sane boy and a girl would be valid in the eyes of Shariah. Family Parity is effective only in selecting the other spouse. It has nothing to do with the validity or the establishment of *Nikāh*.

- 37.6 Any non-Muslim who embraces Islam becomes a respectable member of the Muslim society. As a matter of fact, he holds equal rights and privileges due for those who have been Muslims through generation's altogether. If Muslim girls were married off with neo-Muslim youths, it would not only be permissible, rather accounted as a righteous deed as well.
- 37.7 As far as the Family Parity is concerned, the husband ought to be at par with the wife, no matter the wife is at par with the husband or not. In other words, it is necessary for the man to have equal or higher status than that of a woman. If a sane major boy marries an equal or unequal girl, *Nikāh* would be certainly valid and binding in the eyes of Shariah. The family of the boy has no right, whatsoever, to raise any objection on it.
- 37.8 If a major sane girl weds an unequal boy without the consent of her guardian; the *Nikāh* would be valid as per Shariah. However, the guardian does have the right to approach the *Qāzi* (judge) for separation.
- 37.9 In case a boy or the members of his family lineage, clan, social and economics status, and these baseless facts come to limelight later on revealing that the boy has lied and deceived, The *Nikāh* shall remain valid in such a situation, although the girl or her family reserved the right to approach the *Qāzi* (judge) for separation.

37.10 Religiosity is a very important factor of Family Parity. Apart from it other factors like traditions, local customs and social conditions too play an important role in this respect. They vary from place to place across the globe. The Family Parity cannot be the same throughout the world. Thus, the *'Ulemā* and jurists belonging to different parts of the world shall decide their own respective standards and norms keeping in mind the social interface, traditions, customs and the like. The Family Parity should not be associated with grace or disgrace and honour or dishonour.

38

Marriage with Conditions ♦

Islamic Shariah permits marriage with conditions. However, this aspect almost remained obscure in India. Therefore, the need was felt to clarify certain confusions of the society on the issue. Hence, in the Eighth Seminar of the Fiqh academy this matter was discussed and the following derivations were made.

- 38.1 If marriage is conditioned with such terms as are meant only to emphasise the rights and obligations, which are *ipso facto* created by wedlock, such conditions, will be valid and it will be incumbent on the husband to fulfill them.
- 38.2 To encumber a marriage tie with such conditions which go against the very philosophy and objectives of marriage, or which are forbidden by Shariah, will be invalid, e.g. the condition absolving the husband of his liability to provide maintenance to the wife or the giving of *Jahez* (dowry) or payment of *Tilak* (engagement), etc.

♦ 8th Fiqhi Seminar (Aligarh – U.P) 22-24 Oct 1995.

38.3 If such conditions are agreed upon which neither Shariah has ordained nor it has specifically prohibited, then it will be incumbent upon the involved parties to act according to such conditions.

Injunctions of Shariah about *Mehr* ♦

Islam has given a unique right to women in the form of *Mehr* (dower), which the bride receives from the bridegroom as a consequence of her marriage with him. This particular practice has become controversial nowadays due to the gradual devaluation of present currency, which renders *Mehr* almost insignificant at the time of actual payment of it. Hence, the Second Seminar of the IFA has taken up the matter and resolved as follows.

This Seminar has a strong feeling that *Mehr* should be fixed in terms of gold or silver so that the rights of the marrying women could be properly preserved and they could be saved from loss due to devaluation of the prevailing currency (in which *Mehr* is generally fixed) in the later days.

♦ 2nd Fiqhi Seminar (New Delhi) 8-11 Dec 1990.

40

Position of Demanding Dowry from the Bride's Family ♦

More than hundred religious scholars belonging to different schools of thought in the country attending the Thirteenth Fiqh Seminar of the Islamic Fiqh Academy held in April 2001 signed the following decisions.

40.1 This session of the Islamic Fiqh Academy expresses deep concern over general mentality of putting bridegrooms on sale, rampant in the present Muslim society, where boys are treated as a market commodity. Not only have the boys themselves made higher demands of dowry but also their parents and relatives. They are on a look as to who makes the highest bid for them. Shariah prohibits taking from the girl's party anything in the name of social customs or prevalent dowry. Rather, Shariah has entrusted a man with bearing the expenses of matrimony as ordained by the Qur'an. Today, we have reversed this Qur'anic principle and women are forced to spend money

♦ 13th Fiqhi Seminar (Jamia Syed Ahmad Shaheed Katauli). 13-16 April 2001.

on matrimony. Sometimes the groom's party makes a clear demand for dowry while at others it is received under the garb of customs and rituals. The Shariah forbids all such forms of acceptance and offer.

- 40.2 This session of the Academy calls upon the Muslims of India to set the Muslim society on the path shown by the Prophet (PBUH) and to execute matrimonial alliance in a simple fashion, avoiding all sorts of extravagance. They should hold matrimonial ceremonies without forcing the girl's party to yield to their undue demands and strictly follow the *Sunnah* of the Prophet (PBUH).

41

One Divorce in a State of Intoxication (*Talāq-e-Sakran*)♦

The issue of *Talāq-e-Sakran* (Divorcing in a state of intoxication) was amply discussed and pondered over during the Twelfth Fiqh Seminar held under the aegis of the Islamic Fiqh Academy between in February 2000 at Basti (UP). The following resolutions were passed after an intensive and in-depth debate amongst the delegates attending the Seminar. All the delegates unanimously accepted five clauses of this resolution while a difference of opinion emerged with regard to the sixth clause. The details are as mentioned hereunder.

- 41.1 A person consumes an permissible intoxicant unknowingly and becomes inebriated thereafter. If he gives "*Talāq*" to his wife then the *Talāq* would not hold good.
- 41.2 A person consumes an impermissible intoxicant as a drug in such a situation where the specialist Muslim physicians feel that the treatment of the ailment could be carried out only with that drug or in the other case where he consumes an intoxicating substance because of an unavoidable need for food or water (in the event of not getting

♦ 12th Fiqhi Seminar (Basti) 11-14 Feb 2000.

any permissible substance) in order to save his life and gets intoxicated. In such a situation of intoxication, if the person gives *Talāq* to his wife, it would not hold good.

- 41.3 In case a person is forced to consume liquor or any other intoxicating substance or such a situation of duress and coercion is created wherein it gets permissible for him to consume an impermissible substance, under such circumstances, he consumes the intoxicant and gets inebriated in the process, during this period, if he gives "*Talāq*" to his wife, it would not hold good.
- 41.4 If a person gets intoxicated by consuming a permissible substance and in such a situation, if he gives *Talāq* to his wife, it would not hold good from the point of Shariah.
- 41.5 A person consumes liquor or any impermissible intoxicating substance knowingly on his own and thereafter he goes into a state of inebriation. However, if he is in the initial state whereby a slight dizziness hovers while his senses are intact, under such circumstances, if he gives "*Talāq*" to his wife, then the *Talāq* would certainly hold good.
- 41.6 Nevertheless, if the dizziness takes the form of an intense intoxicated condition and the person concerned loses his senses and control, under such a situation, if he utters the word "*Talāq*", the delegates hold two different views on the point whether the *Talāq* will be legally valid or not.

(a) The following scholars are in favour of the *Talāq* holding good:

1. Ml. Burhanuddin Sambhali
2. *Mufti* Abdur Rahman, Delhi
3. *Mufti* Mahboob Ali Wajeehi
4. *Mufti* Habeebullah Qasmi
5. Ml. Abu Sufiyan Miftahi
6. Ml. Mehfoozur Rahman Shaheen Jamali
7. Ml. Abu Bakar Qasmi
8. Ml. Abu Jandal
9. Ml. Akhtar Imam Adil
10. Ml. Tanveer Alam Qasmi
11. Ml. Abdul Lateef Palanpuri
12. *Mufti* Saeed-ur- Rahaman, Mumbai
13. Ml. Abdul Qaiyyum
14. Ml. Abdullah Muzahiri, Basti
15. Qazi Kamil Sb
16. Ml. Nazeer Ahmad Kashmiri
17. Ml. Ahmad Delvi
18. Ml. Jamaluddin
19. Mohammed Hamza, Gorakhpur
20. Ml. Abrar Khan Nadvi and more

(b) Apart from the above-mentioned delegates, rests of the participants are of the opinion that under the aforesaid condition, the *Talāq* does not hold well, whatsoever. The prominent ones amongst them are:

1. Ml Qazi Mujahidul Islam Qasmi
2. Ml. Syed Nizamuddin (Ameer-e-Shariat Bihar & Orissa)
3. Ml. Yaqub Ismail Munshi
4. Qazi Abdul Jaleel
5. Ml. Obaidullah Asadi
6. Ml. Ateeq Ahmad Qasmi
7. Ml. Abul Aas Waheedi
8. *Mufti* Junaid Alam Nadvi (*Mufti* Imarat-e-Shariah)
9. Ml. Mohammad Salman Husaini Nadvi

10. Ml. Khaleelur Rahman Sajjad Nomani
11. Ml. Zubair Ahmad Qasmi
12. *Mufti* Jameel Ahmad Nazeeri
13. Ml. Sultan Ahmad Islahi
14. Ml. Sabahuddin Malik
15. *Mufti* Naseem Ahmad Qasmi
16. Ml. Khursheed Ahmad Qasmi
17. Ml. Shafeeq Ahmad Muzahiri, Bardawan
18. Ml. Mubarak Husain Nadvi, Nepal
19. Ml. Khursheed Anwar Azami
20. Ml. Ijaz Ahmad Qasmi
21. Ml. Qari Zafarul Islam
22. Ml. Rashid Hussain Nadvi
23. Ml. Riyaz Ahmad Salafi
24. Ml. Asrarul Haque Sabeeli

Inheritance of Agricultural Property by Muslim Women ♦

Islam has given many rights to women including inheritance of agricultural property. However, under the influence of *Zamindari* system that prevailed in India during the medieval period, they were practically deprived from this right with the apprehension that it would lead to the division of larger serfdoms into the smaller ones. Unfortunately, the legislations that were enacted in the modern times could do nothing to mitigate this injustice and to revive the concerning Islamic injunctions to their rightful place, especially in the state of Uttar Pradesh. The Eighth Seminar of the Islamic Fiqh Academy held in Aligarh in October 1995 strived to undo the age-old injustice by reaching upon the following resolutions and making appeal to the authorities and the community for following them earnestly.

42.1 This Seminar of eminent *'Ulemā* and *Muftis*, coming from all parts of India and abroad in the Eighth Seminar of the IFA, expresses its grave concern over the immoral, illegal and

♦ 8th Fiqhi Seminar (Aligarh – U.P) 22-24 Oct 1995.

unconstitutional exclusion of Muslim females in particular and females in general from the repulsive but still prevalent scheme of succession under U. P. Zamindari Abolition & Land Reforms Act (U. P. Act No. 1 of 1951).

- 42.2 The participants of this Seminar similarly express their displeasure at the omission of "Agricultural Land" from the definition of "Muslim Personal Law" as defined in Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937. The participants of the Seminar wish to impress upon the Central Government and the State Government of Uttar Pradesh of the long standing demand of the Muslim community for the restoration of Islamic right of inheritance to their Muslim sisters by including 'agricultural land' within the purview of 'Muslim Personal Law'.
- 42.3 This Seminar is alive to the fact that most Muslim females do get a share even in the agricultural lands because of many *Fatwas*, which have been issued, to this effect in the past. Still, there is urgent need for an amendment in both the Shariat Act as well as the U. P. Zamindari Abolition Act to undo this injustice.
- 42.4 This meeting, therefore, unanimously, resolves to request the All India Muslim Personal Law Board to seek an amendment in the impugned law and demand the inclusion of 'agriculture land' in section 2 of Shariat Act so that what Islam has given to women folk is not denied to them.

42.5 The assembly further issues a directive to the Muslims of Uttar Pradesh to give women their share of property in accordance with the *Holy Qur'an* and *Sunnah* inclusive of agricultural lands and not to deny this right of theirs on the basis of any man made legal system.

43

Sex Education ♦

Human life passes through various stages. One of the important stage of life commences when boys and girls attain the age of puberty. The passions and desires that surface after the age of adulthood are natural and generally need no proper education in this regard. But the pro - puberty and after puberty changes and the perception of these passions that emerge after this age some times lead one to immorality.

This seminar there fore, expresses its deep concern over the schemes of sex education in the educational institutions. This seminar feels that:

- 43.1 Sex education to the boys and girls at the Primary and Middle stages is infact the Western agenda that has been adopted by the government of India. It is not only alien to the Islamic values but also against the Hindu traditions of our country as well as the Eastern morality. The government should desist from such a policy else the moral consequences would be undesirable.
- 43.2 What actually needed is moral education and awareness that would save the young generation

♦ 17th Fiqhi Seminar (Burhanpur – M.P) 5-7 April 2008

from illegal relationship and sexual perversity. To save people from AIDS and similar other diseases is to avoid illegal sexual contacts and to abide by moral values. This is the positive approach. To teach boys and girls the methods of safe illegal sex is a negative one and it is nothing but to call towards sin and vice and is morally and physically devastating to the society.

- 43.3 This seminar demands the government of India to withdraw immediately the schemes of sex education in the educational institutions. Instead moral education should be included in the curricula. It should contain the common moral values of all religions so that the curriculum does not have a stamp of a particular faith only.

44

Rights of prisoners ♦

How the prisoners are being un-humanly treated in the foreign lands is something serious that requires the attention of those who stand for justice and human rights. The seminar of the Islamic Fiqh Academy (India) adopts unanimously the following resolution on the issue explicitly expressing the Islamic and the ethical point of view.

- 44.1 Any one who perpetrates a crime, his/her position as a human being continues to be in existence. A criminal must be punished for the offence, but he/she cannot be deprived of his/her right of human dignity.
- 44.2 One who is accused of an offence, he/she cannot be termed as a criminal unless convicted by a court of law, nor he/she should be subjected to ill treatment.
- 44.3 One may be incarcerated on the basis of charges if strong circumstantial evidences support the charges against him/her or there are clear portents to hold him in doubt. It is up to the Court to determine the extent of imprisonment of an

♦ 18th Fiqhi Seminar (Madurai Tamil Nadu) 28 Feb – 2 March 2009.

accused. But this term of incarceration must not extend from the prescribed term of imprisonment for the concerned offence.

44.4 Rights of a prisoner.

- (A) All the prisoners irrespective of their faith and belief shall have the liberty to perform their religious rituals. The prisoner would be entitled to get the food permissible under his/her faith. No sacrilege should be permitted to the scriptures or the religious guides of a prisoner.
- (B) Physical demands of the prisoners: Balanced diet, potable water, dress in accordance with the weather conditions and medical treatment, these facilities must be provided to the prisoners. They should be allowed physical exercise as per the hygienic norms. The prisoners should not be kept in the cell where it is not possible to stand straight or stretch their legs no proper light and air is there.
- (C) Social rights of prisoners: Such as right to education and technical training. To have contacts with the fellow prisoners under ordinary conditions and to see the visiting relations. So far radio and TV are concerned these are the medium of entertainment so they cannot claim to listen or view it as their right but newspapers may be allowed to them if the administration deem it proper.
- (D) Male/Female prisoners should be lodged in separate prisons. It should be ensured that there

should be female supervisory staff for the female section of the prison. The internal maintenance of the female section should also be in the hands of the female officials. Similarly minor and adult prisoners must have separate wards.

- 44.5 To force the prisoners to reveal the truth and subject them to torture to undress them, to unleash dogs on them electric shock, to make them sit on the ice slabs to force them to remain awake by throwing flood light on them shrill noise or Norco analysis test, all these methods are illegal, immoral and inhuman. To torture in such a way that might result in the loss of an organ or have adverse effect upon their mental health, such punishment are illegal and prohibited (Haram).
- 44.6 To chain the prisoners, handcuff them is not permissible under the Shariah. But if the prisoner is a dreaded and habitual criminal and it is apprehended that he might hit the others, such lawful methods may be used to keep him under control.
- 44.7 If conditions demand the prisoner may be kept in seclusion for such a period as recommended by a medical officer. But it should not be a long one that makes the prisoner mentally ill.
- 44.8 Forced labour: If rigour is a part of his/her sentence. It may be allowed to the extent of the prisoners stamina and he/she will not be entitled to any remuneration under the Shariah. But if the government pays wages to him under its rule it

would be permissible for the prisoner under Shariah. Under other circumstances he would be entitled to wages.

- 44.9 The under trials should not be treated as criminals. They are not criminals but accused. They should not be put to hard labour and fair and better treatment should be meted out to them vis-à-vis the other prisoners.
- 44.10 It is not proper to keep an under trial in detention for a period more than the term of imprisonment prescribed for the crime he/she is accused of. There should not be inordinate delay in the investigation and judgment that the detention of the under trials transcends the period of sentence awarded to him. In such a case he should be immediately released.
- 44.11 If a prisoner is declared not guilty by the Court of law he must be compensated for the mental agony, he underwent during his detention.
- 44.12 A prisoner shall enjoy the rights to consult a lawyer in connection with the trial, to contact his relatives and to plead in his defense.
- 44.13 Female prisoners will be allowed to keep their sucking (infant) babies with them in the jail.
- 44.14 The seminar felt that the rules/regulations enforced in the country relating to the prisons and the prisoners, in most of the cases the rules of Islamic Shariah have been observed. But in effect

most of them are not enforced. This seminar therefore demands that all these rights should be given to the prisoners. The seminar also expressed its concern that ignoring the provisions of law and the directions of the apex Court, innocent citizens are apprehended. During the past some years many Muslim youth have been taken in to custody. They are tortured and tormented. After keeping them under its custody for many days, the police record their arrest and they are produced before the Court of law. This behaviour of police and the law enforcing agencies and the connivance on the part of the government is causing serious concern and it stigmatizes our democracy. This seminar, therefore, urges the central and the state governments to ensure that police and the law enforcing agencies observe discipline and abide by the directions of the Supreme Court as well as the regulations of the law. Those flouting these directions should be taken to task. Strait orders should be issued that no one should be apprehended with out solid proof of offence and no one should be tortured and tormented.

- 44.15 This seminar also feels that the USA and other Western Countries have established torture centers to torment those accused for the so called terrorism. They are brutally tortured. This is a flagrant violation of the international charter and covenants and is an affront to humanity. The UNO, other international institutions and the human right commission should take note of it. We call upon all concerned to raise their strong voice against this persecution and torture cells.

The global institutions impose sanctions against them to force them to abide by the international law.

- 44.16 This seminar expresses its serious concern that some of the lawyers and Bar Councils have resolved not to plead the cases of those accused of terrorism, while this is the legal right of every one to get legal aid. It is a universally acknowledged law that an accused should not be treated as a convict/criminal. The law of the land also upholds it so it is a clear violation of ethical and human norms. Lawyers and the Courts of law are to ensure and enforce the law. It is most unfortunate that they indulge in such unjust and unfair misdeeds. This seminar urges the lawyers and Bar council to desist from such illegal behaviour and demands the government to arrest such a dangerous trend.

Women's Employment ♦

- 45.1 It is fact that Islam lays much emphasis upon strengthening family system. In view of this goal it has divided the family responsibilities between male and female. Man is supposed to shoulder the responsibility of earning livelihood for the family while woman (wife) will have to manage the domestic affairs (house hold). This is the ideal division of responsibilities that exists in the Muslim society even today, to a great extent and guarantees the integrity of the family system. So under this system, earning livelihood is the responsibility of men and not women. To force women to earn, when it is not warranted under economic conditions in the name of liberty and progress, is indeed a sort of repression that woman will have to discharge their house hold duty social responsibility and then shares the burden of this sort along with their husband.
- 45.2 The Shariah under general conditions has not made women responsible to earn livelihood for the family but it is allowed to them to earn restricting them within the limits of the Shariah.
- 45.3 The Shariah has not, in principle made women responsible to earn for the maintenance of their

♦ 18th Fiqhi Seminar (Madurai Tamil Nadu) 28 Feb – 2March 2009.

family but under certain circumstances they are supposed to shoulder this burden.

- 45.4 Economic activities are permissible to women provided they observe the norms of the Shariah in this respect.
- 45.5 A woman may opt for some domestic business but such activities should not adversely affect the right of her husband and children.
- 45.6 (a) If husband or guardian providing maintenance/subsistence to a woman, she must seek consent of them to go outside the house for job whether distance of the place of work is long or short.
- (b) If a woman goes on duty at night, she should be accompanied by her husband or a close relative.
- 45.7 While going outside to perform their duty, ladies must have regard to the following:
- 1- Permission from husband or the guardian except in the cases where no maintenance is provided by either of the two and she has no option but to go herself for earning.
 - 2- She should observe Hijab as enjoined upon by the Shariah.
 - 3- She should not put on attractive dress.
 - 4- She should not use perfume etc.
 - 5- No mixing up with males.
 - 6- No meeting with male strangers in privacy.
 - 7- There should be no neglect in regard to the

rights of the husband and children.

- 45.8 Working women should prefer such institutions where only females are on duty. If males are at the helm of affairs in that institutions it should be taken care of that no male offices contacts a female worker in seclusion. If women workers have to interact with the male officers they should ensure that such a meeting is held with women behind *pardah* /curtain woman workers should not be polite in their talk and no pleasantries with the male officers.
- 45.9 It is not permissible for women to work in an institution where males are their colleagues.
- 45.10 It is not permissible for a woman to stay away from her family permanently. If she has no alternative she should approach a Mufti (Jurist) to seek redressed of her problem.
- 45.11 This seminar demands the government to ban night duty for women, going out to attend the night duty is perilous for her life and feminine dignity and against the social values of our society.
- 45.12 This seminar urges the government educational institutions and welfare organizations, particularly under Muslim administration to establish separate school/colleges for girl students and exclusive hospital for women separate counters should be opened for women in various institutions. So that girls/women can study in a safe and chaste atmosphere. Such an arrangement will ensure more employment opportunities for women.

46

Divorce granted by a Court of Law in a Non Muslim Country♦

- 46.1 If the Judge of the court in a Non Muslim state, is a Muslim and takes into consideration the conditions laid down by the Shariah, he will be deemed as a substitute to a Muslim authority and his verdict concerning annulment of Nikah (Marriage) would be valid.
- 46.2 In Non Muslim states where administration has not provide Shariah Qaza System, it is incumbent upon the Muslim of such countries to set up Darul Qaza, Shariah Panchayat etc in consultation with the authorities and take their disputes to these institutions for adjudication.
- 46.3 Talaq (Divorce) is the most abominable among the valid acts. Extreme care should be taken for compromise/reconciliation and try to avoid Talaq or Khula (Dissolution of Marriage).
- 46.4 If in a Non Muslim country husband is compelled to go to a court of law for divorce, the court judgment would be deemed as final but the husband should also pronounce the divorce.
- 46.5 If in a Non Muslim country a Non Muslim judge on the petition from a wife for dissolution of marriage pronounces the judgment in her favour with the consent of her husband, the verdict would be valid otherwise it

♦ 19th Fiqhi Seminar (Hansot – Gujarat) 12-15 Feb 2010.

will have no credibility in the eyes of the Shariah. In such a case, the wife should either seek Khula from her husband, or turn to Darul Qaza for the annulment of the marriage.

D. Economic Issues

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- 49 Mark-up Pricing (*Murābaha*)
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- 59 On the Use of Bank Interest
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- 61 Guidelines for Islamic Banks
- 62 Feasibility of Islamic Banking in India

- 63 Establishment of Islamic Financial Institutions
- 64 Bank Cards
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- 67 Position of the existing currency in Shariah
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- 69 Children's partnership in the business of their Father

Business Transactions by Modern Means of Communication ♦

The invention of computer, multimedia and Internet has enormously changed human life, to the extent that almost every aspect of society, i.e. education, culture, politics, war, trade and entertainment nowadays depend on these modern means of communication. The e-commerce is presently a widely accepted mode of trading and business transactions. These innovations, that are drastically changing life patterns everywhere, have posed various Islamic issues, including the Islamic authenticity of business transactions and contracting by using them. The Thirteenth Seminar of Islamic Fiqh Academy brought the matter on the anvil of Islamic guidance and concluded as follows.

47.1 *Majlis* (sitting) is the state in which two parties are engaged in deciding a deal. The purpose in *Ittihad-e-Majlis* (Unity of Sitting), is to interlink the proposal with consent at a time while *Ikhtilaf-e-Majlis* denotes that the proposal is not inter-linked to consent a time.

♦ 13th Fiqhi Seminar (Jamia Syed Ahmad Shaheed Katauli) 13-16 April 2001.

- 47.2 In a sale deal the proposal and consent will be acceptable if done through telephone and video conferencing. If the parties are present at a time on Internet and the consent is expressed from the second party soon after the first one makes the proposal, then it will be treated as *Muttahidul Majlis* (United in the Sitting).
- 47.3 There is a case in which one party proposed a deal on the Internet and the second party was not present on the Internet at that time and the second party later on received the message. This will be a mode of business through writing. The moment the second party reads the message it will have to express its consent instantly.
- 47.4 In case both the buyer and seller want to keep a secret of their deal and use a secret code, then the secret will be unfair. However, if the right of preemption or the Shariah right of a person is involved in that contract or deal he has a right to know about the secret deal negotiated between the two parties.

48

Buying and Selling on Installments (*Bai-Bit-Taqseet*)♦

In the age of mass production, several marketing strategies are being applied including sales of commodities on installments. Since, the concept involves realisation of the total selling price after a fixed period, the seller charges a higher price than what would have been the price for cash selling. Accordingly, the value of periodic installments based on the price and period of contract are declared by the seller to attract buyers of the product. The advantage for the buyer under this arrangement is that he/she is not liable to pay the entire price amount at once but it would be paid in easy monthly, quarterly, or yearly installments. However, in the long run he/she is going to pay much more than the normal price. People having small money in hand but wants to purchase costlier things rely on this mode of business deals. In the Tenth Seminar of the IFA, some confusing issues were resolved in the light of Islamic injunctions to guide common men and dealers to perform business in a just manner. The following conclusions were reached upon.

- 48.1 It is definitely valid and permissible to enhance the price of an item if the deal is struck on credit as compared to that of cash transactions in matters of buying and selling. Such a mode of buying and

♦ 10th Fiqhi Seminar (Hajj House Mumbai) 24-27 Oct 1997.

selling is also valid provided that the terms and conditions regarding the price of the item at the time of credit and the duration of its payment are clearly specified before finalising the agreement.

- 48.2 Whether the credit amount is paid back in lump sum or in installments, both modes are valid.
- 48.3 For the sake of such business deals, it is a must that the price is fixed while coming up with an agreement. Initially, only the credit price may be ascertained or both the cash and credit prices.
- 48.4 In buying and selling on credit it, the escalation in prices does not come under *Riba* (interest, usury) as compared to a cash deal. In cash transactions, the item purchased has a value, whatever is the price of the item may be on similar lines, and the price agreed upon is the product value in credit business deals.
- 48.5 The demand of any excess money in the event of non-repayment of the product value or installments within the stipulated period of time falls under the category of interest not withstanding the fact that such a condition was spelt out at the time of agreement or later on.
- 48.6 If a person keeps something as mortgage with himself and profits out of it somehow, such a profit is nothing but an interest, which is impermissible under any circumstance.
- 48.7 In case the product kept for mortgage gets damaged or destroyed in the custody of the

mortgage, then it is considered that if the product value is equal to the lended amount, there is no obligation on anybody. However, if the product value is less then the balance amount due has to be paid by the mortgagor. In the third case, if the product value is more and the mortgagee is found to have behaved in a callous and careless manner, then the balance amount has to be paid by the mortgagee himself.

- 48.8 If the requisite amount is not repaid within the timeframe and the mortgagee turns a deaf ear despite the mortgagor's repeated reminders, the latter is permitted to sell off the mortgaged property at a workable value and recover his money.
- 48.9 It is not desirable for the seller to keep the sold item with himself until all the installments are not paid up in case of a credit deal. Albeit, both the parties should decide that the sold item shall remain in the custody of the seller as a mortgaged property untill the entire installments are paid.
- 48.10 In a situation where the buyer has given some of the installments and the remaining amount is not paid, the seller has no right to take back the already sold item without returning back the paid installments.
- 48.11 It is not proper to give the purchased item in the custody of the buyer and term it as mortgage, although it is possible that the seller might take it from the buyer as mortgage and then pass off it to the buyer as a loan.

- 48.12 Selling off the documents pertaining to credit deals (receipts, share certificates, etc.) to a third person so that, now, he may extract the amount and become the owner, the seller or the person who is entitled to get the money back accepts a lesser amount than the requisite amount isolating, thereby, himself from the deal. Such transactions are impermissible, whatsoever.
- 48.13 It is valid and permissible if the amount due is reduced and collected instantaneously. Such a deal is valid, if there is no fixed timeframe for the repayment of the debt because it is a sort of *Tabarru* (gift, donation). Nevertheless, if the time duration has been pre-specified, such a deal is invalid since the person supposed to repay back might be taking undue advantage of the time period and coaxing the seller to reduce the due amount.
- 48.14 It is, however, certainly permissible to demand for the repayment of the entire amount even before the stipulated time period of repayment if the installments are not being delivered on time. It is so because if one of the parties involved in the deal breaches the contract between them, it is no longer obligatory upon the other party to stick to the agreement.
- 48.15 In case the buyer passes away before the repayment of all the installments, the agreement shall stand as it is, the way it stands valid in the event of the seller's death, provided that the seller agrees upon it otherwise.¹

¹ The committee, formed to look into various aspects of the credit letter charges has decided to further ponder over this issue.

49

Mark-up pricing (*Murābaha*)♦

The Third Seminar of the Islamic Fiqh Academy also considered at length, apart from other issues, the issue of *Murābaha* (Mark-up Pricing) and after due deliberations arrived at the following conclusions:

- 49.1 The term *Murābaha* has a definite connotation with the Muslim jurists.
- 49.2 Only those forms of *Murābaha* have been considered by the Seminar, which are currently in vogue among the Islamic Banks.
- 49.3 It is an established principle of Islamic jurisprudence that the object is central to all transactions and not the nomenclature they go under. Hence, the deals made under the name of *Murābaha* will have to be scrutinised in accordance with their nature, not resting content with just the name those are made under.
- 49.4 Besides the commonly known conditions covering *Murābaha*, all deals entered into by the Islamic banks as *Murābaha*, will be Islamically permissible only when:

♦ 3rd Fiqhi Seminar (Bangalore – Karnataka) 8-11 June 1990.

- a) The quotation forms issued by the banks give full description and quality of the goods offered for sale and in which other necessary particulars have been fully and clearly mentioned so as to eliminate the possibility of disputes between the contracting parties because of lack of full information or ambiguity. Moreover, the profit to accrue to the bank (Sale-Price) over its purchase price or cost price along with the terms of payment, i.e. the period of payment and quantum of installments should also be clearly mentioned.

- b) It will not be proper to quote, at the time of making the deal, two separate sale-prices one for down payment sale and the other for credit sale, or to link the sale price with the length of payment period at the time of making the deal. The Bank should show the sample of commodity offered for sale and should clearly inform the buyer about the period and the number of installments fixed for the payment and the quantum of profit to the Bank, which will be the purchase price for the buyer from the Bank.

50

Sale of Rights ♦

In modern time's concept of several rights have come in vogue, such as patent rights, copyrights, etc. For ascertaining the Islamic position regarding these rights the Islamic Fiqh Academy included the theme in its Seventh Seminar, which concluded as follows.

- 50.1 Commodity is central to all sale transactions.
- 50.2 As to what constitutes commodity, has not been specified by the Shariah, it will have to be determined in accordance with contemporary practices, provided that they do not have any conflict with the Shariah.
- 50.3 It is not Islamically permissible to obtain consideration for those rights which are not rights in *personem* but are meant to save the person claiming the right from some harm, e.g. the right of preemption.
- 50.4 It is permissible to obtain consideration for such rights as have been so classified by the Islamic Shariah and have come to have their value in terms of money and obtaining which is part of prevalent practices, and further that they are, in

♦ 7th Fiqhi Seminar (Bharuch – Gujarat) Dec 30, 1994 – Jan 2 1995.

their nature, not meant to save the person from some harm and are otherwise not in conflict with the general objectives and principles of Shariah.

- 50.5 For determining the nature of right, which, according to the contemporary connotation are, subject to the conditions stated above, fit to be sold and purchased for consideration, reference should be made to authentic theological institutions and scholars for their verdict.

51

Buying and Selling before getting Possession ♦

In present time, there are numerous kinds of transactions in which the buyer sells off the purchased item to others before getting possession over it. Islam justifiably urges people to abstain from selling off before getting actual possession thereon. In this perspective, the Ninth Seminar of the IFA discussed the issue at length arrived at the following conclusions.

- 51.1 As a principle it is not permissible to sell off anything before actually possessing it. Eventually, if the selling deal were struck before getting possession, the sale would be termed as *Fāsid* (corrupted) rather than *Bātil* (null and void) and shall become valid after getting possession.
- 51.2 No specific condition has been laid out in the Holy Book and the *Sunnah* regarding the ownership rights, as if Shariah has recognised the prevalent Muslim custom in this regard. Thus, the nature of the possession would be determined according to the nature of various kinds of goods and the prevalent system of a particular period.

♦ 9th Fiqhi Seminar (Jaipur Rajasthan) 11-14 Oct 1996.

- 51.3 It is clear from the elucidations of the jurists, that possession over sold off goods should be without any hindrance so that the buyer may use them freely. This facet has been termed as *Takhlya* in the Islamic Jurisprudence.
- 51.4 A 'selling deal before getting possession' is prohibited because there is always a risk of rescission, which means that unless the sold off property does not come under the real possession of the first buyer it may be possible that the sold off property may not come under his ownership at all and hence he might not be able to hand over the same to the second buyer.
- 51.5 The prohibition of 'selling-before-getting-possession' is related to movable properties only. On the other hand, selling-before-getting-possession is permitted in case of immovable properties, provided that there is no compelling hindrance to their utilisation by the buyer.
- 51.6 In case a person buys some goods (say, from a factory) and sells it off to another person, although the sold off goods have not, even, been dispatched from the factory, such a sale falls under, the category of 'selling-before-getting-possession' and stands invalid, whatsoever.
- 51.7 A person purchases some goods from a factory, etc. and places his order for transporting the goods by some special means (a ship, transporting vehicle, permits, etc.) and the items in question are dispatched from the factory as well. The buyer

stands responsible in the eventuality of any loss and damage and also ready to bear the transportation expenses. In such a situation, the buyer shall be deemed to have the ownership right, in proxy, over the mode of transport, etc. whatsoever it may be. Thus, under such circumstances it is valid to sell the goods to the next buyer before it reaches there because such a transaction does not fall under the category of selling-before-getting-possession, albeit it is certainly not permitted for the second buyer to sell off the goods to another person before it reaches to him. The latter shall be assumed as a deal falling under the category of 'selling-before-getting-possession'.

52

Trade of Fish which are Still in Water ♦

Prophet Mohammad (peace be upon him) has refrained people from trading in fishes still living in waters. Nowadays, several kinds of fish trades have surfaced up, which might be falling under this category. In this perspective, the Islamic Fiqh Academy, in its Ninth Seminar, took up the issue for a thread bare discussion and arrived at the following conclusions.

- 52.1 The rivers, streams or canals which are not the personal property or asset of any particular individual and which are leased out by the government to individuals, cooperative societies or village 'Panchayats' for a specified period of time are waters at which fishing can be carried out. It is simply a matter of lease contract and hence permissible otherwise. However, the government ought not to lease out such lakes or pools, which may have a baneful effect on the local population.
- 52.2 It would certainly not be valid to sell off the fishes still living in water. In case the seller is the rightful owner of the fishes in the pool, then the sale would stand *Fāsid* (corrupted) under these circumstances.

♦ 9th Fiqhi Seminar (Jaipur Rajasthan) 11-14 Oct 1996.

However, if the seller is not even the owner of these fishes, then the sale of these fishes under water shall be *Bātil* (null & void). However, if the pool is a small one and the fishes can be easily taken out of the waters and can be handed over to the customers, the sale of the fishes under such circumstances would be permissible.¹

52.3 There are three kinds of ownership of the fishes:

- (i) The fishes might have come into the pool, naturally on their own, and the owner of the pool had taken measures to hem in these fishes.
- (ii) The pool might have been constructed with the intention of fish rearing.
- (iii) To use the pool for fish-hatchery.

¹ In the opinion of Ml. Shaheen Jamali, Madrasa Imdadul Islam, Meerut, even if the fishes are in water and the pool is such that it's whole area can be covered with a net, then the selling of the fishes under water is also permissible keeping the modern modes of fishing, commercial transactions and human needs in view.

Shares and their Sale and Purchase ♦

One modern technique of capital generation for huge business ventures is the mobilization of funds from common men by way of offering them share in the promoting company. The shareholders of such a company have an option of selling their shares at any time directly to the company or to any person or business concerns at an appropriate price. The liberty to sell and purchase the share of a company has led to another aspect of the share market that is some people manipulate the prices of the upward or downward share market and almost turn the otherwise a simple business activity into gambling. The complexity of the share market and the involved Islamic issues prompted to take the concerning matters in the Ninth Seminar of the IFA, which provided the following guidelines in this regard.

- 53.1 Equity share in a company is a proof of limited ownership of the shareholder in the company and not a mere indication that he has invested that much amount in it.
- 53.2 The buying of shares of the companies in their initial stages, which are in the process of collecting their capital, is not buying; rather it is participating

♦ 9th Fiqhi Seminar (Jaipur Rajasthan) 11-14 Oct 1996.

or having a share in the company, from the Shariah point of view.

- 53.3 Generally, the other properties of the company have more value than its capital. That's precisely why it is sound to purchase the shares of a company. Nevertheless, if it is known that the amount to be paid is either less than or equal to the face value of shares, then under these circumstances it would not be correct to buy these shares at a price less than or more than its fixed amount.
- 53.4 The buying and selling of shares of the companies, which indulge in impermissible businesses, like that of liquor, pork or interest-bearing loans are strictly invalid and impermissible.
- 53.5 It has been observed that the establishment of companies, which would conduct business purely on Islamic lines, is feasible in India. The Seminar urges the Muslim traders and prominent economists to feel their religious responsibilities and strive to set up such business houses, which would work solely on Islamic lines. Nevertheless, since such companies have not been established in India that work strictly on Islamic lines as yet or even if present they are still negligibly small in number, therefore, those Muslims who have capital and are unable to invest in valid and permissible business ventures owing to certain circumstances, can purchase the shares of the companies carrying permissible businesses (for example, manufacturing of

engineering instruments or items of general use) even if they have to indulge in interest transactions owing to legal liabilities and constraints.

- 53.6 Muslims holding shares in such companies, whose prime business is permissible, although they are, incidentally, involved in certain impermissible practices, should try and forbid the company from such impermissible practices in future at the annual general meetings of shareholders. Furthermore, they should convince other shareholders through mutual discussions too in order to garner their support during the meeting.
- 53.7 In case, interest is a part of the profits earned by the company in a fiscal year and it's quantity is known, then it should be deducted from the profits earned by the shareholders and should be given away in charity (*Sadqah*) without expecting any recompense for it.
- 53.8 In case, interest is a part of the profits reaped by the company, thereafter the interest-included income is invested in a business venture, and profits, thus, earned out of it, then the interest shall be excluded from the profit earned proportionately and it should be given away as charity without expecting any recompense.¹
- 53.9 A company is a legal entity, which represents the collective status of the shareholders. The Board of

¹ As to the clauses 7 & 8 mentioned above, Ml. Rais-ul- Ahrar Nadvi is of the opinion that such interest should be shelled out to non-Muslims alone.

Directors is a group of people elected by the company, which expends on behalf of the company and in this way enjoys the status of an authorised representative of the shareholders. Moreover, it is incumbent upon all the shareholders to share the liabilities of expenditure of the Board of Directors; provided they are in conformity with the rules and regulations, laid down by the company.

- 53.10 It is quite right to trade in the shares of those companies, which undertake, solely, permissible business.
- 53.11 The future sale, the prime objective of which is not meant to buy shares rather to neutralise their losses and gains with fluctuating values of shares is actually an interest-bearing business. It is quite invalid in the eyes of Islamic Shariah because it is an explicit and apparent form of gambling.
- 53.12 The forward sale in which the sale does take place but the actual implementation of the transaction takes place in future, is not a sale rather, is an agreement to sell. The actual sale would take place only after the offer and its acceptance on the scheduled date.
- 53.13 It would not be valid to sell off the shares before getting the share certificates in a cash/spot sale.
- 53.14 The shareholder becomes the legal and authorised holder of the shares, once he gets the share certificates. He can sell off his shares even if his

name has not been endorsed with the company due to certain official impediments.

- 53.15 It is obviously proper to act as a broker in those transactions in which the buying or selling of shares is permitted. On the contrary, it is not permissible for a person to act as a broker in the transactions of those companies, which undertake any impermissible business.
- 53.16 An Islamic financial institution or the Muslims in general can purchase equity shares of such companies, which do purely *Halāl* business.
- 53.17 Investing in share of such companies that undertake solely *Harām* business is totally impermissible.

The Issue of *Pagdi* ♦

In order to avoid the harmful effects of untoward occupancy by the tenant, who either not pay the due rent in time or do not vacate the rented house, shop or premises as per the mutual agreement between the landlord and tenant, even having some court judgements strengthening this wrong practice, led to the charging of security money at the time of beginning of tenancy, commonly called as *Pagdi*. This entails the issue of rights of the owner, first tenant and the subsequent tenants. Different views had been expressed in the First Fiqh Seminar held in April 1989 on the issue of *Pagdi*. In the light of those opinions a questionnaire with five questions was formulated and was sent to various renowned *Ulemā* and *Muftis* of India for eliciting their views. Recorded below is the consensus, which emerged from replies received in the Second Fiqh Seminar.

54.1 As for the amount, which the owner of a house receives from the tenant by way of security deposit, it is desirable that the owner of the house keeps that amount with him, as it is. However, in case he makes use of the amount, it would be his responsibility to repay the amount to the tenant forthwith on the termination of tenancy.

♦ First Fiqhi Seminar (New Delhi) 1-3 April 1989.

- 54.2 When a house or shop is rented out and the landlord extracts some amount in cash by way of *Pagdi* (security), as it is known these days, over and above and in addition to the stipulated monthly rent, it could be deemed that the amount so received is in lieu of his relinquishing his right to reclaim possession of his house from the tenant and it would thus be Islamically permissible for him as being in lieu of his right to reclaim possession of the house at will. In that case when the landlord wishes to take back the premises in his possession, it would be permissible for the tenant to demand and obtain some mutually agreed amount from the landlord in lieu of his vacating the premises and further, it would also be permissible for him to obtain some mutually agreed amount from another prospective tenant in lieu of transferring to him his right to possession which he had earlier acquired against the landlord by paying some amount to him for this purpose.
- 54.3 In case the owner has leased out the premises without securing *Pagdi* and without specifying the period of lease, the landlord shall have the right to reclaim possession of the premises whenever so desired. However, the landlord should give prior notice to the tenant and allow him suitable time commensurate with the interest and convenience of both, to vacate the premises and the tenant should vacate it within that time limit.
- 54.4 It will not be permissible for the tenant to demand any amount by way of *Pagdi* from the landlord for

vacating the premises in case the premises had been rented out to him without obtaining any amount from him by way of *Pagdi*.

- 54.5 The Muslims are called upon to observe the injunctions of Shariah in all matters. Shariah enjoins that all terms governing a contract must be explicitly and unambiguously settled between the contracting parties so as to leave no room for any difference or dispute in future and both parties are safe from any harm visiting them. The Seminar particularly emphasises that the tenure of lease should be clearly fixed and in case the landlord wishes to relinquish his right to reclaim possession of the leased premises, the parties should specifically agree to it and to the terms thereof.

Insurance of Life and Property Due to Communal Violence ♦

The justification or otherwise of Insurance under the prevailing conditions of India was put for deliberation in the light of the questionnaire issued by the Academy. All kinds of life, property and various other insurances were discussed at length in the Fifth Seminar on Islamic jurisprudence and a committee was formed consisting of the following persons to submit its proposals:

1. Ml. Obaidullah Asadi (Banda), Convenor
2. Ml. Khalilu-ur Rehman Sajjad Nadvi (Lucknow)
3. Ml. Syed Nizamuddin (Patna)
4. Ml. Zubair Ahmad Qasmi (Hyderabad)
5. *Mufti* Zafeeruddin Miftahi (Deoband)
6. Ml. Nizamuddin Rizvi (Mubarakpur)
7. Ml. Khalilur Rahman Azmi (Omerabad)
8. Ml. Ateeq Ahmad Bastawi (Lucknow)
9. *Mufti* Fuzail-ur Rehman Hilal Usmani (Punjab)
10. Ml. Sadar-ul Hasan Nadvi (Aurangabad)
11. *Mufti* Habibur Rahman Khairabadi (Deoband)
12. Ml. Mohammad Nooh Qasmi (Kerala)
13. Ml. Riazur Rahman Rashadi (Bangalore)
14. Ml. Moosa Ibn-e-Ahmad (Kerala)
15. Mr. Syed Aminul Hasan Rizvi (Delhi)

♦ 5th Fiqhi Seminar (Jamiatur Rashad Azamgarh) Oct 30, Nov 2 1992.

The committee considered all pros and cons of the issue and felt that the policy of Insurance Companies is not clear whether the loss of life and properties because of communal riots is covered under the existing laws and regulations of Insurance or not.

It was felt by the committee that the issue should be further probed and discussed at length and full details regarding different schemes be obtained from insurance experts.

This proposal of the committee was accepted in the general session of the Fifth Seminar and the following committee consisting of the following members was constituted to formulate a final opinion after considering the issue from every angle in consultation with the experts.

1. Mr. Mujeebullah Nadvi, Azamgarh
2. Mr. Mohd. Burhanuddin Sambhali, Lucknow
3. Mufti. Mohd Obaidullah Asadi, Banda
4. Mr. Ateeq Ahmed Bastavi, Lucknow
5. *Mufti* Habibur Rahman Khairabadi, Deoband
6. *Mufti* Ahmad Khanpuri, Dabhel
7. Mr. Abdul Ahad Azhari, Malegaon
8. *Mufti* Manzoor Ahmad Kanpuri, Kanpur
9. Mr. Nizamuddin Ashrafi, Mubarakpur
10. *Mufti* Mohd Zafeeruddin Miftahi, Deoband
11. *Mufti* Abdul Quddus Roomi, Agra
12. Mr. Zubair Ahmad Qasmi, Bihar
13. *Mufti* Junaid Alam Nadvi Qasmi, Phulwari Sharif
14. Mr. Khalil-ur Rahman Azmi, Umerabad
15. Mr. Khalil-ur Rahman Sajjad Nadvi, Lucknow
16. Janab Abdus Sattar Yousuf Shaikh, Mumbai
17. Mr. Qazi Mujahidul Islam Qasmi, Patna

After due deliberations the committee presented its recommendations in the ensuing Seminar of the

Academy and the following statements were accepted by the attending experts.

The constant peril to the life and properties of Muslims in India under the prevailing circumstances due to recurring communal riots and the gross negligence of the government officials towards their prime duty of providing protection to the Muslims bordering on encouragement and, at times, actual participation in the riots as also the lack of interest shown by the government machinery in providing compensation for the destruction of life and property of the Muslims was discussed at length in the Fourth Seminar held at Hyderabad. It was decided to form a committee to go into the issue and submit its observations to be considered at the next Seminar (See report of the Fourth Seminar). Keeping in view the fact that *Majlis-e-Tehqiqāt-e-Shariah*, Lucknow had taken the decision in favour of Insurance in 1960 and also the recent *Fatwa* issued by Darul Ifta, Darul Uloom, Deoband, the committee gave its recommendation in favour of Insurance.

Since insurance in its present form is not permissible under the Shariah as it is based on interest, gambling and speculation which are prohibited in Shariah. But the prevailing circumstances in India where Muslims life, property, trade and industry are exposed to a constant danger of communal carnage, necessity overrides prohibition. Also in view of the fact that the Shariah lays greater emphasis on the safety of life and property, life and property insurance is therefore permissible under the

Shariah to avoid perils and losses in the existing condition in India¹.

The following theologians and *Muftis* have put their signatures on this important decision:

1. Ml. Qazi Mujahidul Islam Qasmi, Patna
2. *Mufti* Habibur Rahman Khairabadi, Deoband
3. Ml. Nematullah, *Mufti*, Deoband
4. *Mufti* Mohd Zafeeruddin Miftahi, Deoband
5. Ml. Mohd Burhanuddin Sambhali, Lucknow
6. Ml. Mujeebullah Nadvi, Azamgarh
7. *Mufti*. Habibullah Qasmi, Jaunpur
8. Ml. Ateeq Ahmed Qasmi, Lucknow
9. Ml. Khalid Saifullah Rahmani, Hyderabad
10. Ml. Abdul Rahman Qasmi, Gujarat
11. Ml. Shams Peerzada, Mumbai
12. Ml. Zubair Ahmad Qasmi, Hyderabad
13. Ml. Anisur Rahman Qasmi, Patna
14. *Mufti*. Mohd. Obaidullah Asadi, Banda
15. *Mufti*. Junaid Alam Nadvi Qasmi, Patna
16. *Mufti* Jamil Ahmad Naziri, Mubarakpur
17. Ml. Sanaul Huda Qasmi, Vaishali
18. Ml. Sultan Ahmed Islahi, Aligarh
19. Dr. Abdul Azeem Islahi, Aligarh
20. Ml. Badrul Hasan Qasmi, Ministry of *Awqāf*, Kuwait
21. *Mufti* Azizur Rahman Fatehpuri, Mumbai
22. Ml. Rafiq Al-Mannan, Ahya ul- Uloom, Mubarakpur
23. Ml. S. Mustafa Rifai Nadvi, Bangalore

¹ It may be made here clear that the suggestion on behalf of the Fiqh Academy and it being seconded by the scholars attending the Seminar does not mean that insurance stands for the security of Muslims. It also does not mean that after this insurance, the amount that is received by the insured ones would be legal and permissible to the beneficiaries. But the point is that what ever is received as compensation to the loss of life and property during the riots and is given under the law is permissible to the insured persons. In other cases only the actual amount paid as a premium will be permissible to the insured persons and not the profit and dividend. And the legitimacy of the extra amount paid under the insurance is like a guarantee on the part of the government against its inability and irresponsibility.

24. Ml. Maazul Islam, Moradabad
25. Ml. Abdullah Mughisi, Meerut
26. Ml. Arshad Qasmi, Meerut
27. Ml. Abdul Jaleel Qasmi, Champaran
28. Ml. Sadrul Hasan Nadvi, Aurangabad
29. Ml. Abdul Rahim Qasmi, Bhopal
30. Ml. Mubarak Hussain Nadvi, Nepal
31. Ml. Afzalul Haque Qasmi, Gorakhpur
32. Ml. Shamim Ahmad, Mau
33. Ml. Sayeedul Haque Qasmi Madani, Mau
34. Ml. Mohd. Yousuf Qasmi, Mubarakpur
35. Ml. Sarfraz Ahmad, Jamia Mubarakpur
36. Ml. Afzal Ahmad Qasmi, Patna
37. Dr. Qudratullah Baqvi, Mysore
38. Ml. Abdul Qayyum Palanpuri, Gujarat
39. Ml. Abdullah Qasmi, Varanasi
40. Ml. Abdul Rahman Qasmi, Chhapi, Gujarat
41. Ml. Mohd. Imran Mazahiri, Chhapi, Gujarat
42. Ml. Mohd. Qamruzzaman, Allahabad
43. Mufti. Naseem Ahmad Qasmi, Patna
44. Ml. Shah Badar Ahmad Mujeebi, Patna
45. Ml. Tanveer Alam Qasmi, Sitamarhi
46. Ml. Mohd. Rashid, Deoband
47. Ml. Iqbal Ahmad, Deoband
48. Ml. Shoaib Islahi, Azamgarh
49. Ml. Nazeer Ahmad Qasmi, Barabanki
50. Ml. Ashfaq Ahmad Qasmi

However, three '*Ulemā*', named below, were of the view that insurance of property only is permissible:

1. Ml. Shabbir Ahmad Qasmi, Moradabad
2. Ml. Abdullah Phoolpuri, Sarai Meer
3. *Mufti* Mohiuddin, Tadkeswar, Gujarat

56

The Status of Currency and its Exchange between Two Countries ♦

In the present era, gold and silver no more remain common men's currency and the paper currency has replaced such valuable commodities in the trading exchange. The worldwide legislations have also validated paper notes as 'sum' in themselves and they no longer remain to be just the promise of the issuing authority to pay the mentioned money and made it compulsory to accept paper currency as a valid sum. In another words, the status of the paper notes in the common practice has become legally valid. After taking stock of the effects caused by the concept on some of the accepted principles of Shariah due to its comprehensive and almost universal impact on mankind, the theologians and experts, assembled on the occasion of the Fourth Seminar of the Islamic Fiqh Academy, agreed upon the following points.

- 56.1 Currency-notes are just not the proof and reference rather they are 'sum' in themselves and according to the Islamic Shariah their position is that of a 'sum', both technically and legally.
- 56.2 In the present age, the paper currency has replaced the 'amount' in term of the created commodities such as gold, silver, copper, precious stones, etc. and the mutual exchange generally goes by the

♦ 4th Fiqhi Seminar (Hyderabad – A.P) 9-12 Aug 1991.

paper currency only. Therefore, the currency notes have also become equal to real sum in view of Shariah. Hence, it is not valid to exchange currency notes within a country with any reduction or increase.

- 56.3 The currencies of two different countries are actually two different commodities; therefore, the exchange of a sum in the currency of one country with that of another is permissible with reduction or addition according to the mutually accepted difference.
- 56.4 *Zakāt* is obligatory on the currency notes.
- 56.5 The *Nisāb* of currency notes shall be equal to that of silver.
- 56.6 On the question of accepting the devaluation or appreciation of the value of currency in terms of purchase value in the injunctions Shariah, there are two opinions in the Seminar. Therefore, appropriate decision will be taken in this regard in some latter Seminar.

Issues Concerning Interest (*Ribā*) ♦

Certain issues concerning interest were discussed in the Second Fiqh Seminar. One of the major themes of the Seminar was *Ribā* (interest). Consensus on the following points emerged after deliberations in the light of Shariah, rules of Islamic Jurisprudence, precedents and the demands of prevailing conditions.

- 57.1 *Ribā* (interest) is totally *Harām* (prohibited), both its giving and taking.
- 57.2 Paying of interest is not forbidden for itself but it is so because it opens door for the taking of interest. Hence, under certain compelling circumstances the paying of interest may become permissible. The circumstances, under which it may become permissible for the needy person, will depend on individual cases for the determination of which the person concerned should consult a competent *Mufti* and abide by his guidance.
- 57.3 The Government of India advances loans on subsidy basis and interest is also charged on the loan amount. In such cases if the total amount of interest charged does not exceed the amount of subsidy or falls short of it, then the amount

♦ Second Fiqh Seminar (New Delhi) 8-11 Dec 1989.

charged as interest will not be interest according to Shariah.

- 57.4 In cases where the Government compulsarily acquires land (or any other property) under the Land Acquisition Act and fixes its market value according to its own formula; and the land owner, being dissatisfied with the price so fixed, gets the dispute referred to courts of law for adjudication and the court fixes a higher price and orders the Government to pay the same along with interest at a fixed rate on the difference, this Seminar is of the view that this additional amount paid under the name of interest is not, in fact, interest but should be treated as part of the price of the property in question, receiving and using of which is permissible.
- 57.5 In cases where the Government fails to pay the just dues of its employees at proper time and an employee ultimately approaches a court of law for redressal and the court, while fixing the quantum of the amount payable to the employee, further orders that interest at a certain rate be also paid over and above the due amount, this Seminar is of the view that the additional amount ordered to be so paid by way of interest is in fact, not interest and such person can take and use the amount.
- 57.6 As regards the question of interest-bearing development loans advanced by nationalised banks, in view of the peculiar context of India, this Seminar recommends to the Islamic Fiqh Academy to constitute a committee of religious scholars and

other experts and assign to it the task of examining the issue in all its dimensions and give its findings on the issue.

- 57.7 As per orders of the Reserve Bank, all financial institutions and Banks are compulsorily required to invest 5% (five percent) of their total capital in interest-bearing government bonds/securities. Therefore, it would be proper to allow the interest thus accrued to be accumulated and proportionately withdrawn the amount invested in interest-bearing bond/ securities making the accrued interest to gradually replace the deposited capital.

Commercial Interest and the Islamic Shariah ♦

After taking into consideration all the relevant facts, and after comprehensive discussions, the Second Seminar of Islamic Fiqh Academy held in New Delhi arrived at the following conclusions regarding consumptional and productive loans and reasonable and unreasonable rates of interest.

- 58.1 Shariah has categorically prohibited interest on all types of loans, consumptional as well as productive. It is sheer misunderstanding that Shariah prohibits interest only against consumptional loans and allows it on productive loans. It is entirely incorrect that productive loans did not exist during the period of revelation of the Qur'an. It has been established historically that the Arabs of the *Jāhiliyah* period as well as the nations who had commercial relations with pre-Islam Arabs had well established practice of receiving and paying extra amount on productive loans. Moreover, even if the practice of obtaining productive loans and extra payment thereupon is not to be found during the period of revelation of the Qur'an, it could not be made to mean that Shariah permitted interest or the prohibition of interest on such loans did not exist. The Qur'an,

♦ Second Fiqhi Seminar (New Delhi) 8-11 Dec 1989.

the *Sunnah*, the *Ijma*, the *Qiyās* and the precedents of unbroken chain of practice of the Ummah, each one of them, declares in unequivocal terms that the motives behind receiving or advancing a loan is entirely irrelevant to the prohibition of interest.

- 58.2 Further, the prohibition is in no way affected positively or negatively, by the rate of interest being reasonable or unreasonable (moderate or excessive). Shariah does never admit that interest may be permissible if the rate of interest is reasonably low and prohibits only when it is unreasonably high. The Shariah refuses to make any such distinction. Both are equally prohibited according to the Islamic Law.

59

On the Use of Bank Interest ♦

Participants of the Second Seminar were unanimously of the opinion that the interest paid by the banks undoubtedly comes under *Riba*. Some questions came up during the Seminar as to whether the amount of the interest should be withdrawn or left in the bank? Furthermore, in case it is withdrawn from the bank, how the bank-paid interest should be spent?

- 59.1 It was agreed that the accruing interest should not be left with the bank. Instead it should be withdrawn and be used under the following heads.
- 59.2 The interest paid by the banks may be spent on the poor and needy without expecting any recompense from Allah.
- 59.3 The above-mentioned amount in any way may not be spent on any mosque and its related requirements.
- 59.4 Majority of the participants held the opinion that the above-mentioned interest may be used for social welfare activities as well as on paying obligatory alms. However, some '*Ulemā*' opined to limit its use for the poor and needy persons only.

♦ Second Fiqhi Seminar (New Delhi) 8-11 Dec 1989.

60

Service Charges of Interest-Free Loan Societies ♦

The functioning of interest-free loan societies and problems relating to the same were considered in the Third Seminar. The conclusions arrived at after due deliberations are as follows.

- 60.1 Such institutions are welfare institutions in their nature, which are based on compassion, righteousness, virtue and fellow feeling.
- 60.2 To collect any amount, by whatever means, from the debtor over and above the actual loan amount is not permitted in Islam as all amounts so collected fall within the category of interest. Hence, to collect any excess amount, be it for the benefit of one's own self, or the loaning institution or for the purpose of financing any other charitable or welfare institution, is Islamically not at all permissible. Similarly, it is also *Harām* (prohibited) to put the amounts belonging to such institutions as fixed deposits in banks and utilize the interest accruing thereupon.

♦ 3rd Fiqhi Seminar (Bangalore – Karnataka) 8-11 June 1990.

60.3 As to the finances necessary for the operational expenses of such institutions, this Seminar suggests the following measures:

- a) The charity-minded well-off and affluent persons should bear all the operational expenses treating it as an act of service for their community and to seek the pleasure of Allah. If such institutions succeed in bringing it home to the people that they operate strictly within the bounds of Shariah under the guidance of *'Ulemā* and by offering financial assistance to their brethren to save them from the curse of interest, it is strongly hoped that the affluent Muslims will come forward to shoulder the burden of the operational costs of such institutions and even to provide finances for the expansion of their activities.
- b) This Seminar is of the view that such institutions should try to invest a part of the capital in their hands in productive ventures to earn some *Jaiz* (Islamically permissible) income, at least to the extent of being able to meet the operational costs of the institutions.
- c) Many of the participating *'Ulemā* are of the view that service charges of operational costs, though indispensable and even if at the level of bare-actual, cannot be charged from the creditors. Some other *'Ulemā* hold that although in essence, this may be Islamically permissible, it should necessarily be held as impermissible

as inherent in it is the danger of the door for interest, getting opened.

- 60.4 Some other *'Ulemā* put forth the view that in as much as setting up of such welfare institutions fulfill a great need of the community and in case required cooperation from the well-to-do people of the community is not forthcoming, nor it be possible to generate capital for the operational costs through Islamically lawful productive investments, in that case the actual cost necessary to meet the operational cost may be charged from the debtors because the amount thus collected goes neither to the persons collecting it nor forms a source of income for the institution's purse.
- 60.5 However, even those holding this view were firmly of the opinion that as charging any amount to the debtor over and above the loan amount is quite against the Islamic spirit of loaning and since it is to be permitted only because of its unavoidability, extreme care should be taken in computing the operational costs to be charged from the debtors.
- 60.6 In case the operational costs, estimated with great caution and collected from the debtors, are found, at the end of the accounting period, to be in excess of the actual expenditure incurred, it would be incumbent on the institution, according to Shariah, to return the balance to the debtors from whom it had been collected, on *pro rata* basis.

Guidelines for Islamic Banks ♦

The following guiding principles will have to be kept in mind while preparing the scheme for an Islamic banking system.

- 61.1 Interest-bearing deals and transactions of all kinds involving interest are strictly prohibited in Islam.
- 61.2 Islam holds justice to all the parties indulging in economic and commercial transactions as prime condition, which means full justice to the investor and the entrepreneur, both. The investor should have a share in profit and must also fully bear the loss, if any, while the entrepreneur should have a share in profit and in case of loss should stand deprived of any return for his labor.
- 61.3 Money should be treated as a means for procuring the necessities and conveniences of life and not as an end in itself.
- 61.4 Capital should be regarded as a trust from Allah to be utilized to meet the real needs of men and to improve their economic potential, unlike the current manner of utilization by the investors and

♦ Second Fiqhi Seminar (New Delhi) 8-11 Dec 1989.

the banks, which is aimed simply at multiplying the wealth.

- 61.5 Distribution of wealth should be in a manner so as to improve the economic conditions of the weak and backward class of people and to minimize inequity and disparity in its distribution. Keeping this in view, the Islamic Banks, while providing the capital, should give precedence to necessities over luxuries and keep the ratio of their profit at a level conducive to give encouragement to small entrepreneurs.
- 61.6 There should be a check on all such means of acquisition of wealth, which are commonly practiced these days but are outstandingly dishonest and deceitful.
- 61.7 Besides adhering to the above guidelines and while keeping in mind the general objects of Islamic socio-economic system, care should be taken to retain its moral spirit and the values of honesty and truthfulness that go with it, so that it may not be a soulless mechanical exercise but should effectively replace the contemporary system which is based on hypocrisy, exploitation and selfishness, with one founded on compassion, good-will and fraternal cooperation.
- 61.8 With this end in view this Seminar decides to set up a Committee comprising Islamic scholars and experts in the science of economics to formulate a scheme for a new fiscal system embodying the principles of Shariah and the guidelines mentioned above which may, keeping in view the conditions

prevailing in India and the problems facing Muslims, be in consonance with the aspirations of Muslims and the values they cherish and may also provide solution to their real economic problems.

The Feasibility of Islamic Banking In India ♦

The Indian financial institutions are regulated by Reserve Bank of India, which does not permit interest-free banking system. Therefore, it was discussed in the Second Fiqh Seminar of the Islamic Fiqh Academy held in December 1989 in New Delhi to find out ways and means to develop a legal framework for the operation of interest-free banking in India either by taking recourse to the existing laws or by lobbying for change in the relevant legislation.

Regarding Islamic Banking it was decided that it should be based on *Mudhārabah*, *Mushārahah*, *Ijārah* and *Murābaha* and should necessarily be kept clean of *Riba* (interest). To chalk out its practical aspects a committee of economic experts and Islamic scholars was formed consisting of:

1. Dr. Rahmatullah Ansari
2. Dr. Abdul Haseeb
3. Dr. K. G. Munshi
4. Dr. Fazlur Rahman Faridi
5. Dr. Nejatullah Siddiqui (Saudi Arabia)
6. Dr. Mohammed Manzoor Alam
7. Dr. Mohammad Anwar (Malaysia)
8. Janab Abdul Wahab Delvi

♦ Second Fiqhi Seminar (New Delhi) 8-11 Dec 1989.

9. *Mufti Saeed Ahmed Palanpuri*
10. *Mr. Khalid Saifullah Rahmani*
11. *Mr. Ateeque Ahmed Bastavi*
12. *Mr. Qazi Mujahidul Islam Qasmi*

The detailed sixty-page report of the Banking Committee on the issue of Islamic Banking was presented. Mr. Abdul Haseeb, former Director, Reserve Bank of India and Mr. Muhammad Hussain Khatkhatey put up the abridgement of this report in Urdu before the participants of the Seminar.

- 62.1 It was highlighted in this report that interest-free Islamic Banks cannot be established in India unless prevailing Banking laws are suitably amended and Banks are permitted to directly finance the trade and industry.
- 62.2 As an alternative, the report recommended the setting up of Islamic Financial Institutions and interest-free societies under the Indian Companies Act and Cooperative Credit Societies Act with adoption of Partnership under certain conditions.
- 62.3 Islamic modes of business like *Mudhārabah*, *Shirkah*, *Murābaha* and *Ijārah* are recommended to be adopted, in this report, as also those banking services which are free from interest and which are called 'Non-Banking Services'.
- 62.4 Establishment of a central (federal) institution to control such Islamic Financial Institutions is also recommended in the report. The central institution will issue certificate of financial stability and

validity of such bodies and take stock of the credibility and administrative ability and capability of any new financial institution in case it is planned. It will also impart them useful advice and arrange to utilize the surplus capital of one institution through another in some profitable and permissible business.

Establishment of Islamic Financial Institutions ♦

For the development of a proper plan leading to establishment of the Islamic banking system the following principles will be kept in view:

- 63.1 It is also recommended that a Board consisting of prominent theologians and jurists be formed to guide the Islamic Financial Institutions from time to time in the light of Shariah in connection with the business methods to be adopted by them.
- 63.2 The seminar directs this Report to be filed in the record of the Islamic Fiqh Academy of India along with other documents and thanks the Committee for submitting such an enlightening and comprehensive report.
- 63.3 The seminar resolves that a Board of theologians be formed by the Islamic Fiqh Academy of India to give legal advice and suggestions in the light of Shariah regarding problems and practical difficulties to be faced by the contemplated Islamic Financial Institutions, presented before them by the banking experts. This Board will also consider

♦ 4th Fiqhi Seminar (Hyderabad) 9-12 August 1991

the questions raised in this report and present their solutions in the light of Shariah.

- 63.4 This seminar also resolves that a permanent Board consisting of experts on Banking and Islamic economy be set up to continue the task and prepare a blueprint for financial institutions which may be able to render such diverse financial services for the benefit of Indian Muslims as are permissible under Shariah and practicable legally.
- 63.5 It was also resolved that the board of theologians should include one or two banking experts while, on the other hand, the banking committee should include a couple of theologians.

64

Bank Cards ♦

The Fifteenth Fiqhi Seminar of the Islamic Fiqh Academy focused its discussion on the matter of various kinds of cards issued by banks to their customers to ascertain in what conditions the injunctions of Interest (*Riba*) will become applicable and in what conditions it will not? It is because Interest has been prohibited in Islam due to its exploitative nature, and it cannot be permitted in any case. In this background the following resolutions were arrived at.

- 64.1 While considering permissibility as central to every matter, there seems no objection from the Islamic viewpoint in using the ATM cards to withdraw one's own money deposited in the bank account.
- 64.2 It is permissible and apt to use debit cards in selling and purchasing things and transfer money from one account to the other.
- 64.3 It is permissible to pay money for acquiring the ATM or debit cards and to pay all charges involved in this regard, since such an amount

♦ 15th Fiqhi Seminar (Mysore – Karnataka) 11-13 March 2006

would be deemed nothing but fee for the particular services provided by banks.

- 64.4 Since the prevalent pattern of credit cards is beyond doubt an Interest-based dealing, hence the use and possession of credit cards or any equivalent thing is not permissible.

65

Multi Level Marketing♦

- 65.1 The prevailing system of multi level marketing is based on various immoral practices, cheating, risk, connecting the deal with something irrelevant. Mixing a deal with two other deals and a sort of speculation and gambling. All these are forbidden under the Islamic Shariah. Under this system a purchaser does not intend to buy something but to earn a higher commission. So it is not permissible to involve one self in such a dubious business system.
- 65.2 Since it is not permissible to join this business, it is therefore not permissible to motivate others to be a partner in this transaction. Similarly to earn commission through the members of the lower category is also impermissible.
- 65.3 Muslims should not join any business system that impinges on the Islamic rules of trade and transaction.

♦ 16th Fiqhi Seminar (Azamgarh – U.P) 30 March, 2 April 2007.

Educational Loans ♦

Education is one of the basic need of every human being and Islam has encouraged the acquisition of knowledge that is beneficial. To achieve this goal, and individual, the government and the society supposed to discharge their obligation. In this perspective this seminar demands the government that:

In our country education has become so expensive that impoverished citizens particularly majority of the Muslims finds it impossible to go in for higher education. Our country is a bouquet of various faiths, cultures and languages. If a community or a section of the society lags behind it would be detrimental to the collective national development. It is therefore an obligation on the part of the government to take effective steps to ensure that Muslims get proper and equal opportunity in the field of education. Interest free loan should be extended to Muslims students higher education and condition for the scholar should be made easy.

This seminar calls upon Muslims that:

- 66.1 It is obligatory on them to give priority to the education of their children and spend a reasonable part of their income on it.

♦ 18th Fiqhi Seminar (Madurai Tamil Nadu) 28 Feb, 2 March 2009.

- 66.2 They should establish at local, national and international levels such information centres and societies keeping in view the educational requirements of their young generation, to guide them concerning the issues of higher education in India and abroad.
- 66.3 There should be coordination and cooperation among various societies/organizations engaged in providing scholarship to students. They should share their information as well. It will facilitate the students in winning scholarship/stipend.
- 66.4 They should initiate educational funds at the regional and state level to help promising students in their higher studies.
- 66.5 The experts in modern education particularly retired professionals should come forward to guide the young generation sharing their expertise with them.
- 66.6 Ulema and the rich of the society should try to get maximum benefit from their services at coordinated level.
- 66.7 The Muslim institutions of modern/secular education should provide relief in educational expenditures to enable the talented poor student to easily benefit themselves from this facility. These institutions must do away with heavy donations as it is not permissible under the Shariah. They must relieve Muslim students (boys/girls) of this un-Islamic financial burden. It is not only un-Islamic

but also against humanity. This seminar exhorts Muslim students he/she that:

- 1- Islam says that knowledge is the lost property of a Muslim. Muslims, therefore, should acquire professional knowledge with a sense to serve the humanity.
- 2- It is imperative that Muslim students boys/girls while maintaining their religious identity should make diligence and competition in education their habit/approach.
- 3- To meet their educational expenses they should go in for scholarships and interest free loans.
- 4- Just as taking interest is forbidden in the Shariah similarly paying interest is also unlawful. So the loans that are to be repaid with interest are also forbidden. So if students find it difficult to continue their studies due to financial constraints and interest free loan is not available, they should approach a Mufti (Jurist) and follow his advice.

67

Position of the existing Currency in Shariah[♦]

- 67.1 It is not advisable to coordinate deferred payments or other payable money to the price index or the price of gold and silver. Because the index is based on complex financial principles; speculation and assessment. So it is impracticable and could be controversial. More over in both the cases it might lead to Riba (Interest)
- 67.2 It is better that Mehr (almonry) deferred should be determined in silver/gold. The Academy has already decided it as such. In such a case gold/silver will have to be paid as per the quantity agreed upon. If parties agree to pay the price of gold/silver, it would also be permissible. The same ruling would be applicable to a case where the payment of wages or cost was to be paid in gold/silver.

[♦] 19th Fiqhi Seminar (Hansot – Gujarat) 12-15 Feb 2010.

68

Tawarruq[♦]

Some times it so happens that some one is in dire need of money but there is no one to pay him a loan. So he resorts to purchase some commodity on credit at a higher rate and then sales it to a third party on cash at a lower rate to have cash in his hands. This practice has been in vogue since ancient times.

The jurists of Humbali sect have called it Tawarruq. Majority of the Jurists consider it permissible as it has two separate dealings. In this contemporary era some Islamic banks and financial institutions practice Tawarruq. There is difference of opinion on, so it the issue was debated and deliberated at the seminar and the following resolution was passed.

- 68.1 If Islamic bank or financial institution sales a commodity on credit to the one seeking loan, on a higher rate or then purchases it, itself or through its agent at a lower rate, such transaction is not permissible.
- 68.2 Infact the bank does not involve itself in transaction, it is just a formality. So it is not valid.
- 68.3 If a bank sales some commodity on credit to a person seeking loan and is not involved in indirect transaction and the first person sales it to a third party on cash, who is not related to the said bank, than the transaction would be valid and permissible.

[♦] 19th Fiqhi Seminar (Hansot – Gujarat) 12-15 Feb 2010.

69

Children's partnership in the business of their Father♦

- 69.1 Islamic Shariah has enjoined upon Muslims to be fair in their dealings. So Muslims should be more particular in this regard. In business/trade it is of a paramount importance. A person is involved in business and his children also joined in their father's business. If the status/position of the children working with their father is determined at the very beginning (partner, worker or assistant) most of the family finds concerning ownership will be solved to a great extent. So steps should be taken to determine this position at the early stage.
- 69.2 If father had started his business with his own capital and some of his children joined his business but did not invest their own capital and father has not declared their position in his business, so if the children are dependent on their father, they will be deemed as assistant to their father in his business, other wise their wages would be fixed as per the prevailing rates and they will get the payment.
- 69.3 If the children have also invested capital in the business along with their father and the share of their investment is known, they would be deemed as partners and their share will be determined at the ratio of their invested money. Save that the son who invested money in the business had the intention to be his father's assistant and not as a partner.

♦ 19th Fiqhi Seminar (Hansot – Gujarat) 12-15 Feb 2010.

- 69.4 If the son has started business with his own capital but as a token of respect, he lets his father to attend the business affairs or names his shop after his father, in such a case his father will not be deemed as partner or owner of the business.
- 69.5 If during the life time of their father, children opted for various professions and they paid a share of their earning to their father, the money paid to their father would be deemed as his property.
- 69.6 If father terminated his business due to any reason but the shop whether rented or owned by himself remains with him, and one of his son starts his own business there with his own money, the proprietor of the business will be the son not his father. But the shop where the son started his business will be deemed as owned by his father not by him. In case father dies all his dependents will have their claim to that property. Similarly the good will of the business will be of his father's and all his dependents will have their right in it.
- 69.7 There are various problems arising out of such issues in the society? It needs to be explained and Muslims should be made aware of it. This conclave, therefore, urges the Academy to draft a detailed guiding text on the point. The points that require research, should be exclusively deliberated at a seminar and there by resolved.
- 69.8 Imams, preachers, and Ulama are requested to promote awareness on the fair dealings of affairs, masses should be enlightened on the issues relating to inheritance, partnership etc in accordance with the teachings of the Shariah. Particularly the issues concerning partnership among parents, children and brothers.

E. Medical Issues

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and Abortion
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70

Medical Ethics in Islam♦

Advances in medical science, and in the related technology, have changed doctor-patient relations in many ways. Therefore, need was felt to reassert and redefine rights and obligations involved during medical practice in modern time so that the medical ethics prevalent in these days could be tempered in the light of Islamic teachings. The Eight Seminar of the IFA discussed many related issues of medical ethics and resolved as follows.

- 70.1 Only a duly qualified person whose competency in the matter has been authenticated by a credible authority is competent to undertake treatment of patients. It is not permissible in Shariah to treat patients without competence.
- 70.2 If, during the course of treatment by a person, not permitted by Shariah to do so, some major harm is caused to the patient's health, the treating person shall be liable to penalty and punishment.
- 70.3 If the patient suffers harm to his/her health due to the negligence of or some lapse on the part of the

♦ 8th Fiqhi Seminar (Aligarh – U.P) 22-24 Oct 1995.

person treating him/her (he/she, even may be a qualified physician), that person will be liable.

- 70.4 If, in spite of opportunity, the doctor performs an operation without the consent of the patient or his next kin and the operation either causes death or some injury to the patient, liability will be on the doctor.
- 70.5 If the patient is in an unconscious state and his/her next of kin are also not available and the doctor feels that to save the life or any organ of the patient, immediate operation is called for and he/she performs the operation without obtaining any one's consent, and it results in some injury to the patient, the doctor will not be held liable.
- 70.6 If a person negotiating for marriage with some woman is suffering from such disease or deficiency which if becomes known to the woman she might decline to accept the proposal, and his doctor has the knowledge of that disease or deficiency, and the concerned lady or her guardian contacts the doctor and in the context of the impending marriage proposal enquires about the true state of the health of the person, it would be incumbent on the doctor to state the factual position. In case the lady or any of her guardians do not contact the doctor in this regard, it will not be incumbent on the doctor to, of his own accord, inform the lady or her guardians of the person's disease or deficiency.

- 70.7 If the eyesight of a driver employee gets impaired it will be incumbent on his doctor to inform the employer of the same. Similarly, if the pilot of an airplane or a bus-driver is so addicted to drinking as may jeopardise the safety of passengers, it will be incumbent on the doctor to inform of it to the concerned authority.
- 70.8 If the doctor knows about an offence having been committed by his patient and some one else is being prosecuted for that offence, it will be incumbent on the doctor to make the fact known to the authority in order to save the innocent persons. The principle of confidentiality will not be applicable in such a case.

71

Position of Shariah on Birth Control and Abortion ♦

The concept of family planning and population control on the pretext of depleting resources or demands of modern life styles created controversies all over the world, particularly among the religious circles. There was a consistent pressure on *'Ulemā* (theologians) to guide the Muslim community on various aspects and practices emanating from this concept so that the Muslims could act according to the precepts of Shariah and the non-Muslims could be convinced of the rationality of the Islamic viewpoint. Therefore, the First Fiqh Seminar of the IFA debated on the issue of birth control and abortion so as to guide the Muslim community in this regard. The Seminar reached to the following derivations.

- 71.1 Any practice leading to terminating or restricting human birth is against the basic tenets of Islam.
- 71.2 In no case Shariah approves the evasion or refusal of shouldering the responsibility of procreation on the ground of keeping the family small as a fashion or because of hindrance in cultural pursuits or because of affecting employment or business engagements of the parents.

♦ First Fiqhi Seminar (New Delhi) 1-3 April 1989.

- 71.3 The women who take up employment as a career to achieve higher standard of living or to amass wealth, ignore their function of procreation and also forget the sacred obligation which nature has blessed them with, as mother of human race. Therefore, the idea of limiting the family with these considerations is totally un-Islamic.
- 71.4 If due care and nourishment of the child falls in jeopardy because of early pregnancy of the mother, in that case, to keep a suitable interval by spacing conception, temporary birth control devices can be adopted.
- 71.5 Adopting permanent birth control devices (like vasectomy) are in no case permissible for men. Such devices are prohibited for women as well. However, only in exceptional cases this is permissible, that is, if in the opinion of a medical expert there is danger to the life of the woman or apprehension of destruction of some organ of the woman while delivering a child, oviductomy operation can be performed on the woman to prevent future pregnancy.
- 71.6 Use of temporary birth control measure under ordinary circumstances is not permitted in Islam.
- 71.7 Under the following exceptional circumstances use of temporary birth control devices or taking medicine for that purpose is permissible for men and women.

- a) If the woman is very weak and in the opinion of doctors she cannot bear the rigours of childbirth without the risk of grave danger to her life.
- b) If the pains of childbirth are going to be, in the opinion of medical experts, unbearable for the woman and shall expose her to grave harm.

Transplantation of Organs ♦

The problems and issues related to transplantation of human organs were discussed threadbare in the First Fiqh Seminar held on 1-3, April 1989. There was almost a consensus on some issues. For the rest of issues, in order to arrive at a final decision, a sub-committee was formed to prepare a questionnaire in the light of issues that emerged in the Seminar and to send it to *'Ulemā* (theologians) and *Fuqaha* (jurists) for their opinion, which was obtained accordingly. After going through those deliberations and the opinions so received, the following conclusions were unanimously arrived at.

- 72.1 If an organ of a person stops functioning and for the purpose of restarting it's functioning it becomes necessary to replace that organ, it is lawful to use:
- a) Organic or inorganic objects such as metal, plastic, etc.
 - b) Organs of *Halāl* animals, which have been slaughtered according to Islamic methods.
 - c) For replacement the organs of such animals whose meat is *Harām*, or of such animals whose meat is *Halāl* but which have not been

♦ First Fiqhi Seminar (New Delhi) 1-3 April 1989.

slaughtered in the prescribed Islamic manner, in cases where there is no alternative available and either the life of the person is in danger or the organ is in the danger of being completely damaged.

- d) If there is no strong danger to life or the organ being damaged, the use of the organs of pigs is not permissible.

72.2 It is valid to replace a part of a person's body with another part of the same person if necessity so demands.

72.3 It is not permissible to sell one's organs. It is *Harām*.

72.4 In case a patient has reached the stage where his organ has stopped functioning and there is strong danger that he will lose his life if that organ is not replaced through transplantation, and there is no substitute for it except the human organ, and medical experts are of the opinion that there is a strong likelihood of his life being saved if transplantation of human organ is made and that the needed organ is also available, in such a desperate and unavoidable situation, transplantation of human organ will be permissible for the patient to save his life.

72.5 If a healthy person, in the light of the opinion of medical experts, is sure that he/she can live with one kidney only, it will be valid for him/her to donate one kidney to an ailing relative, if it be

necessary to save his life while no alternative is available, but without charging any price.

- 72.6 If someone expressed his wish that after his death his organs may be used for transplantation purpose (testamentary disposition as it is commonly known) it cannot be considered as *Wasiyat* (will) according to Shariah and is invalid according to Shariah and such a wish is not to be honored.

73

Matters related to AIDS ♦

Acquired Immune Deficiency Syndrome (AIDS) has almost become a modern plague, spreading very fast in various parts of the world. In order to save the life of healthy persons by controlling its spread and to treat the patients suffering from the disease and to understand related issues, the Islamic Fiqh Academy brought the issue on the agenda of its Eight Seminar in row. The following decisions were made.

- 73.1 If a person, not disclosing that he is suffering from AIDS, contracts a marriage, the wife shall have the right to have the marriage dissolved. She will have the same right in the case of her husband contacting AIDS subsequent to marriage provided that AIDS assumes serious proportion.
- 73.2 If a woman suffering from AIDS gets pregnant and a qualified doctor be of the opinion that in all likelihood the foetus will also develop AIDS, in that case, prior to the life coming in the embryo, the period which the Muslim jurists have fixed as 120 days from the day of conception, permission for abortion can be given.
- 73.3 If an AIDS patient is completely in the grip of the disease and is rendered incapable of performing

♦ 8th Fiqhi Seminar (Aligarh – U.P) 22-24 Oct 1995.

normal functions of life, such a person will be treated as one on deathbed.

- 73.4 It is the moral responsibility of an AIDS patient to inform his kinsmen of it and also to take all necessary precautionary measures.
- 73.5 If an AIDS patient insists upon his doctor to keep it under wraps and the doctor is of the opinion that by doing so there is the likelihood of harm to the members of the patient's household, to patient's relatives and to the society at large, then it will be incumbent on the doctor to convey the information to the relatives of the patient and to health authorities.
- 73.6 In respect of the persons suffering from AIDS or some other infectious diseases, it is the duty of their folks, relatives, and the society as a whole, not to leave them isolated and uncared for. Taking all necessary precautions, good care should be taken of the patients and due cooperation be offered in their treatment.
- 73.7 It is improper to keep the AIDS-infected children deprived of education. Observing due precautions, arrangements for imparting education to them should be made.
- 73.8 Restriction of movement in and out of plague-affected areas is desirable except in cases of extreme necessity.
- 73.9 It is *Harām* (totally forbidden) and a major sin for AIDS patients to, knowingly, transmit the disease to any other person. Such a person will be liable

for punishment in view of the nature of the act and for the harmful effect it has on an individual or on the society as a whole.

74

Use of Alcohol ♦

It is a universally accepted fact that the use of alcohol as a inebriating substance is harmful for life. However, its other uses remain controversial among the Muslim theologians. In order to develop appropriate clarity on the matter, the Fourteenth Seminar of the IFA considered it and propounded the following opinion.

- 74.1 Alcohol is a chemical substance, which is prepared by the process of decomposing various kinds of carbohydrates or sugar present in fruits and cereals. It is of many types, but only one of them is intoxicating in nature.
- 74.2 Certain medicinal drugs contain ethyl alcohol. This type of alcohol is intoxicating in nature and it does not lose its characteristics in spite of being mixed in the drug. However, as far as the treatment and cure is concerned, Shariah clearly mentions some provisions, by which the consumption of alcohol-containing drugs is permissible, in case no other alternative is available.
- 74.3 According to the research reports of the experts, the alcohol used in the preparation of perfume is not intoxicating in nature. Therefore, it is not unclean.

♦ 14th Fiqhi Seminar (Hyderabad –A.P) 20-22 June 2004.

75

Medical Insurance ♦

No form of gambling is permissible under the Islamic Law. The prevalent method of medical insurance is tantamount to gambling on the ground of its actual consequence; which has turned the benign service of medical treatment into business and trade. In this context the delegates of the Fifteenth Fiqhi Seminar of the Islamic Fiqh Academy have taken the following decisions regarding medical insurance:

- 75.1 Medical insurance, like all other aspects of insurance itself, is based on non-permissible dealings. Therefore, in normal situation medical insurance is not permissible; and in this judgment no distinction could be made between the governmental or private set ups.
- 75.2 If the medical insurance has been done due to any legal compulsion, then there could be possibility of permission. In such a situation, it will be obligatory upon a capable patient to distribute equivalent of the excess amount spent on treatment as compared to the deposited amount in charity without expecting any divine reward on it.
- 75.3 The Islamic alternate of the prevalent system of medical insurance is possible and the simple

♦ 15th Fiqhi Seminar (Mysore – Karnataka) 11-13 March 2006.

solution in this regard could be the establishment of such medical institutions by the Muslims, which could treat poor patients while helping them according to their needs.

76

Genetic Test ♦

The advancement of science and technology in the present era has provided several benefits to mankind. However, from human perspective there are some negative aspects of concerning developments too. Genetic science and DNA test comprise important links in this regard. Hence, the following resolutions of the Fifteenth Seminar of the Islamic Fiqh Academy were brought on record concerning various aspects of genetic engineering.

- 76.1 If it becomes evident from a genetic test that the foetus is growing in the mother's womb with an incurable mental or physical disability and that the life of the prospective human being would be some sort of a burden and taxing to the parents, then in such a situation it will be permitted for them to abort it before 120 days from the conception.
- 76.2 If it is established by the genetic test that the next generation of a person would suffer from hereditary disability of sever nature, and then it would be permitted to check the birth.
- 76.3 If it is apprehended from the genetic test that a person would become mad or suffer from such an incurable disease which provides ground for

♦ 15th Fiqhi Seminar (Mysore – Karnataka) 11-13 March 2006.

dissolution of a marriage, then such a test would not be regarded a sufficient ground for dissolution of any marriage.

- 76.4 It is permissible to make use of genetic test for treatment, diagnosis of disease and for carrying out research in the field of genetic engineering.

77

DNA Test ♦

The following decisions were taken in the Fifteenth Seminar of Islamic Fiqh Academy appertained to the DNA test:

- 77.1 It is not permissible to create doubt about the lineage a person through DNA test, which could otherwise be established according to the principles of Shariah.
- 77.2 If there are a few claimants of a child and no one of them possesses any irrefutable proof in this regard acceptable to Shariah, then in such a situation the validity of a claim could be established through the DNA test.
- 77.3 Validity of a DNA test will not be acceptable as compared to the Islamically valid methods for proving crimes attracting capital punishment.
- 77.4 Validity of a DNA test will be acceptable for proving such crimes, which are not attracting capital punishment according to Shariah.

♦ 15th Fiqhi Seminar (Mysore – Karnataka) 11-13 March 2006.

78

Plastic Surgery ♦

- 78.1 It is permissible to go in for plastic surgery to remove physical deformity. Defect/deformity means a deformity in the body that makes the physique different from common and formal creation whether it is a defect by birth or it manifests after wards.
- 78.2 To remove physical deformity if physician so advises - plastic surgery is permissible.
- 78.3 It is not permissible to go in for plastic surgery to get the wrinkles or changes that are the result of wear and tear in the physical appearance due to advancing age.
- 78.4 If nose and other organs of the body are not attractive and unpropertionate but are not beyond the common and popular creation them it is not permissible to opt for plastic surgery just for transforming onself attractive.
- 78.5 It is not permissible to resort to plastic surgery to conceal ones identity save that a victim is desperately indeed to save him/herself from repression.

♦ 18th Fiqhi Seminar (Madurai – Tamil Nadu) 28 Feb 2 March 2009.

79

Death, when it is to be declared and artificial respiratory apparatus ♦

- 79.1 When the respiratory system collapses completely and the signs of death are apparent, only then it would be declared that the patient is dead. His will would take effect from that time. The inheritance will be released and the period of *Iddat* will also be counted from that time.
- 79.2 When the patient is on the artificial respiratory system and the physicians are hopeful that his natural respiratory system will be restored, the relatives of the patient may ask for the removal of the artificial respiratory apparatus if it is not possible to continue the treatment out of in assets of the patient and it is beyond the means of the relatives to pay for the treatment nor other resources are available to continue it.
- 79.3 If the patient is on the artificial respiratory system and the physicians have lost hope for his life, the relatives may ask for the removal of the artificial respiratory apparatus.

♦ 16th Fiqhi Seminar (Muhazzabpur - Azamgarh) 30 March 2 April 2007.

80

Euthanasia - What the Shariah enjoins? ♦

Islamic Shariah lays greatest emphasis on the safety of human life. The person concerned and the others are under obligation to ensure the safety of one's life.

- 80.1 To redeem a patient from unbearable pain or to relieve the relatives of the patients from the burden of heavy treatment expenses, to take any such step that causes the death of the patient is absolutely forbidden. It is illegal rather a sinful act of homicide.
- 80.2 No lethal medicine should be administered to the patient. It is also not permissible to discontinue the treatment despite having resources for it, to see that the patient dies an early death.

♦ 16th Fiqhi Seminar (Muhazzabpur - Azamgarh) 30 March 2 April 2007.

F. Modern Technology

- 81 Use of Internet and other Modern Means of Communication
- 82 Change in the Nature of substances & its Juridical Implications
- 83 The Slaughtering by Machines
- 84 The Issue of Using Gelatin
- 85 The Issue of Cloning

81

Use of Internet and other Modern Means of Communication ♦

Internet and modern means of communication were received awfully by a large number of people and various apprehensions and harmful effects, real or virtual, were thought of as a consequence of acceptance of these modern means in society. The Muslim circles were also having mixed reaction to their emergence. Therefore, it was considered pertinent to take proper decisions on the inter-related issues in the Twelfth Seminar of the IFA, so that both the pros and cons these means could be realised and the Muslims could use them accordingly. The following resolutions were unanimously passed.

- 81.1 It is the duty of Muslim Ummah to make all possible efforts and strive to spread the word of Allah apart from protecting and preserving the identity of Islam.
- 81.2 As per "وأعدوا لهم ما استطعتم من قوة" it is absolutely correct and appropriate to employ both traditional as well as contemporary means to fulfill our duties. In fact, it is required to employ the beneficial and effective means, as the circumstances demand.

♦ 12th Fiqhi Seminar (Basti – U.P) 11-14 Feb 2000.

- 81.3 There is no harm in using the modern means of communication for religious purposes whether it is in the form of listening to the programmes or in the form of, practically, participating in the programmes or establishing one's own radio station.
- 81.4 In fact, the Internet has emerged as the most important means of communication in present time. It is a super means or method to convey our message to others. In order to ascertain the validity of a means or mode from the viewpoint of Shariah, it ought to be seen that for which objectives it is being used. The use of a means or mode is permissible for permissible objectives and vice-versa from the angle of Shariah. Only then it will be decided that the achievement of these goals is *Farz* (obligatory), *Wājib* (essential), *Mustahab* (preferred) or *Mubāh* (permitted). And, the extent to which the use of these means is indispensable in the quest for achieving the objectives shall determine validity the use of those means of communication, i.e. it is *Farz*, *Mustahab* or *Jāiz*.
- 81.5 In the light of these principles, the participants of the Seminar observed that the use of Internet as a means of religious, preaching and collective prosperity is quite permissible and at times, vital as a means of communication.

It is also necessary to avoid forbidden and reprehensible acts in the process of presentation and display.

81.6 The television is a marvelous means of communication by virtue of which one can, not only listen to the voice but also see the faces of the people and events from all over the world. Sometimes, the motion pictures are telecast live on the television or the telecast of any conference, event, sports activity or function is recorded and preserved in videocassettes and telecast later on.

One peculiar problem with the television is that whether the pictures which are shown to the viewers through this medium fall under the same category of picturing and portraying which is prohibited by the *Hadith* of the Prophet (pbuh) or not. Generally, the scholars from India feel that the photographs taken with such type of cameras (motion pictures) are also a part of the prohibited ones. Some of the scholars from Arab countries are of the view that photography doesn't come under the category of prohibited pictures.

The second troublesome aspect of television is its misuse. In the veil of entertainment, enjoyment and advertisements, the dignity of women is being outraged. Vulgarity and bawdiness has become a common phenomenon. Furthermore, such morally denigrating movies and soaps are being aired on television, which simply cannot be watched by a family sitting together, or else they face tremendous embarrassment. The children get so much infatuated by the T. V. programmes that their interest in academics and books dwindles steadily. These vices are just like the tip of an iceberg. They have been brought about by the

television making itself a curse on the society. No doubt, the television can be employed for certain constructive and beneficial tasks. However, its negative impact on the society at large far exceeds the virtuous and constructive gains it provides.

Under these circumstances, the participants of the Seminar call its use and the vulgarities and obscenities that it breeds as highly impermissible and a medium of destruction for the society and, thereby, instruct the populace to avoid its baneful use.

- 81.7 Another pertinent question relates to those channels, which have been established with the sole pious objective of religion and *Da'wah* and those, which are in the process of being launched. Is the establishment and drawing benefits from such channels, which are free from all sorts of vulgarities and obscenities permissible, or not?

Almost all the participants of the Seminar have voted in favour of it while a handful of them do not favour it even under such conditions. Their names have been mentioned below¹:

1. MI. Abdul Lateef, Palanpuri
2. MI. Abdul Qayyum, Palanpuri
3. MI. Abdur Rahman, Palanpuri
4. MI. Mohammed Hamza, Gorakhpuri
5. MI. *Mufti* Mohammed Zaid
6. MI. Zubair Ahmad of Muzahirul Uloom

¹ In the opinion of MI. Burhanuddin Sambhali and MI. Arshad Qasmi Farooqi, the telecast is permissible if it is live and impermissible if the programme is recorded, preserved and then aired.

Change in the Nature of Substances and its Juridical Implications ♦

The injunctions of Shariah regarding the permissibility or prohibition of certain substance might alter with the change in their nature. Substances change property in different chemical and physical environments due to certain intrinsic processes, transforming into altogether new substances. Therefore, the juristic position on them should also change accordingly. The emergence various kinds of technologies and their role in changing the properties of substances, making them useful for mankind in discrete ways, have made the matter more complex in the present age. It called for specific deliberations of the Islamic theologians to guide the Ummah on the use of various substances invented and produced nowadays. The Fourteenth Seminar of the Islamic Fiqh Academy passed the following judgements on the matters related to the theme.

82.1 The prohibition and profanity of the substances described as forbidden or impure in Shariah pertains to the essence of the thing in question. Any change in the original characteristic or nature of the thing due to a human action, chemical or non-chemical reaction, processes, or due to physical and environmental impacts without

♦ 14th Fiqhi Seminar (Hyderabad – A.P) 20-22 June 2004.

involving any human action, will abrogate the earlier Shariah injunctions about it. Here no discrimination will be made between absolute and non-absolute impurity.

- 82.2 What we mean by change of nature is the change in the particular properties of a thing that pertain to its distinctiveness. The presence of the reminiscent of other ineffective properties not reckoned in the original quality of thing does not hinder the process of change in the nature of a substance.
- 82.3 If there is only an intermixture of forbidden and impure substance with a permitted and pure substance and there occurs no change in the original quality of the substance, it will still remain forbidden and impure.
- 82.4 This seminar observes that it is necessary to seek the opinion of experts of chemistry and biochemistry before arriving at a decision on the change of the nature of substance in alcohol and gelatin. This seminar, therefore, calls upon the officials of the Islamic Fiqh Academy to postpone the decision on this subject till another seminar to be held in the near future, so that necessary information on this issue is collected from authentic sources and conveyed to the Islamic scholars and jurists to help them arrive at a right decision.
- 82.5 This seminar urges the Muslim scientists as well as the leading personalities of the Islamic world to

discover the substitute in herbs, physical objects and legitimate animals for forbidden and impure ingredients used in drugs for medical purposes, so that Muslims could avoid medicines containing forbidden and dubious substances as, being Muslims, it is their religious and moral duty.

The Slaughtering by Machine ♦

The issue of *Zabiha* by machine' was discussed and pondered over at the Ninth Fiqh Seminar of the Islamic Fiqh Academy held at Bharuch. The delegates had unanimously decided it's validities and invalidities under various circumstances. However, the scholars and jurists were divided over one of the aspects of *Zabiha* by machine. The Seminar observed that such a complicate issue requires another thoughtful deliberation and the pros and cons in nut-shell ought to be sent to the delegates for a second thought so that they may ponder over the issue once again and give their esteemed opinions over it. In this perspective, the Academy sent another comprehensive questionnaire. A number of replies poured in. In the light of those replies, the following derivations were made.

- 83.1 In case the animal comes in front of the slaughterer in an unconscious state, hanging on from the chains or the strap of the machine run by electric power and the slaughterer recites "*Bismillah*" before slaughtering it with his own hands, making sure that the animal was alive at the moment of being slaughtered, then such a procedure is distinctly valid because only the process of carting is being carried out by the machine while the remaining act of slaughtering is done by human

♦ 9th Fiqhi Seminar (Jaipur Rajasthan) 11-14 Oct 1996.

hands. The Academy urges the Muslim owners of the slaughter-houses to introduce and popularise this process itself. Several slaughterers can be employed in order to speed-up the slaughtering process, if need so arises.

83.2 Such a situation, where both the carting and the slaughtering of animals is done by the machines in such a way that it starts functioning on pressing a button and the animals get slaughtered turn by turn; it has invoked different opinions:

- a) The slaughtering of the first animal would be permissible while the slaughtering of the remaining animals will be impermissible. This is the opinion voiced by most of the delegates present in the Seminar.
- b) The slaughtering of the first animal would also be invalid. This is the view of some of the delegates who are as follows:
 - * *Mufti Shabbir Ahmad Qasmi, Muradabad*
 - * *MI. Badr Ahmed Mujeebi, Patna*
 - * *MI. Mujeebul Ghaffar Asad Azmi, Varanasi*
 - * *MI. Abul Hasan Ali, Gujarat*
- c) The slaughtering of the first animal would stand valid. Moreover, the other animals, which get slaughtered before the slaughtering process gets over is also permissible. This is the unanimous opinion of the following delegates:

- * MI. Raisul Ahrar Nadvi
- * MI. Sabahuddin Malik Falahi
- * MI. Sultan Ahmed Islahi
- * MI. Jalaluddin Ansar Umri
- * MI. Yaqoob Ismail
- * MI. Sadrul Hasan Nadvi
- * MI. Qazi Mujahidul Islam Qasmi
- * MI. Khalid Saifullah Rahmani
- * *Mufti* Naseem Ahmad Qasmi
- * MI. Ijaz Ahmad Qasmi

83.3 Those delegates who believe that only the first animal gets slaughtered in the *Halal* way by the slaughtering machines feel that if such a machine is invented which incorporates a large number of knives and which, with the push of a button, operates simultaneously slaughtering several animals at a time, such a process of slaughtering would be permissible from the Islamic point of view.

83.4 Furthermore, it should be made clear that the aforesaid suggestions regarding the slaughtering by machines have been laid out keeping in view the specific structure of the machine. They do not hold good for all kinds and varieties of machines. In fact, legal and juristic opinions shall vary from machine to machine keeping in mind their specific structure and *modus operandi*.

The Issue of Using Gelatin ♦

Gelatin is a new kind of stuff used in many products in modern times. Since it is produced from otherwise illegitimate and non-permitted raw material, the question arises whether its use is Islamically permitted or not? Hence, Gelatin became one of the subject matter of the Fourteenth Seminar of the Fiqh Academy, which provided the following guidance in that regard.

- 84.1 Gelatin is an organic substance, which is a type of protein. It is formed when another protein the Collagen found in the skin and bones of animals undergoes chemical transformation. The substance so obtained takes the form of a different protein, the chemical and medicinal properties of which are absolutely different from that of the Collagen. It is also dissimilar to the Collagen in terms of its color, smell, taste and other characteristics.
- 84.2 In case the substances, which are described as impermissible by Shariah, undergo a complete process of metamorphosis, then the validity of the law does not hold well. The special or basic properties of the substance, by which it has been universally accepted and identified, are the real characteristics and identification of the substance. According to the research undertaken by the

♦ 14th Fiqhi Seminar (Hyderabad – A.P) 20-22 June 2004.

scientific experts, Gelatin does not possess the characteristics and properties of the skin and bones of animals, whose Collagen is used to prepare Gelatin. In fact, an altogether new substance is produced which has distinctly different characteristics from its parent substance. Therefore, there is a room for its use.¹

- 84.3 In view of differences between the jurists as well as the importance of edible substance, the Seminar earnestly appeals to the Muslim businessmen and traders to prepare Gelatin only from permissible animals using the permissible and clean parts of their body, so that there may be no doubt over the issue of its permissibility and lawfulness.

¹ In view of the differences in opinion between the experts, one of the distinguished delegates of the Seminar, Maulana Badrul Hasan Qasmi expressed his preference for avoiding the use of Gelatin, which is obtained from the parts of impermissible animals, as far as possible.

The Issue of Cloning ♦

As a matter of fact, Islam has always ushered in the scientific developments with an open heart and mind. When man investigates and conducts research, employing his brain bestowed upon him by the Almighty, he doesn't invent, he merely 'discovers'. Moreover, he does not earn credit for creating something new. He simply unveils the hidden facts of nature.

Undoubtedly, Islam has applauded all such researches and scientific endeavours which are beneficial for the mankind and are helpful in achieving the five goals of Islamic Shariah, viz. protection of religion, protection of self, protection of race, protection of wisdom and protection of property. Moreover, it should not be harmful for the mankind.

Keeping all these facts and principal teachings of the Islamic Shariah in mind, the Tenth Seminar organised by the Islamic Fiqh Academy at Mumbai in October 1997, discussed the issue of 'Cloning'. Upholding, the suggestions given by the Majma-ul-Fiqh-ul-Islami, Jeddah, regarding this issue, the following proposals were approved unanimously.

85.1 In the wake of the details and various aspects, which have come, and the grave consequences in

♦ 10th Fiqhi Seminar (Hajj House – Mumbai) 24th to 27th of October 1997.

terms of moral and social implications arising out of it, it is observed, that all methods and modes of human cloning are absolutely forbidden, whatsoever.

- 85.2 However, such a type of cloning in the realm of flora and fauna realm, which is beneficial for humans and are in no way, detrimental and pernicious to the human beings in terms of morality, religion and physique, are permissible.
- 85.3 Furthermore, this seminar hosted by the Islamic Fiqh Academy earnestly appeals to the Government of India to get such legislations enacted which would ensure that the indigenous or the foreign research organisations or even the multinational trade giants do not attempt to make this country a testing ground for research in human cloning.

G. Miscellaneous Issues

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- 87 Islam and the World Peace
- 88 Declaration of Islamic Brotherhood & the Solidarity of Ummah
- 89 The Intellectual Growth of Students of *Madāris*
- 90 Ecological Conservation

Relations between the Muslims and Non-Muslims ♦

Never before the relations of non-Muslim and the Muslims was so much under strain as in the present time. The powerful nations and the media hype dub many justified activities of the Muslims as wrongs and some of the Muslim groups have also earned notoriety among the non-Muslims for their extreme views and actions. In this background it was considered important by the Islamic Fiqh Academy in its Fourteenth Seminar to reassert the Islamic viewpoint regarding the relations of the Muslims with people of other creeds and cultures. The theologians attending the Seminar have put the following guidelines forth.

- 86.1 Islam has its own distinctive permanent system of governance. However, in the perspective of the present global circumstances, as compared to other non-Islamic systems of governance, the prevalent democratic system is preferable and more suited to the Muslim minorities. Therefore, under the political system, it is perfectly permissible for Muslims to partake in the electoral process, contest the elections, and exercise their franchise as well to participate in any election campaign for any candidate.

♦ 14th Fiqhi Seminar (Hyderabad – A.P) 20-22 June 2004.

- 86.2 It is the demand of the *Milli* and the religious interests and aspirations of the Muslims to exercise there legal and constitutional right to vote, in an aggregate and wholehearted way.
- 86.3 It is not permissible for Muslims to join or be associated with those political parties that unabashedly declared their party's motive of opposing Islam and Muslims. Further, it is not appropriate to vote for any candidate of such a party, no matter if he is a person of good character in personal terms.
- 86.4 Pacts and alliance can be made with democratic and secular political parties in the greater interest of the community.
- 86.5 A substantive course of action can be followed along with the like-minded non-Muslims to create an atmosphere of peace and security ensuring fairness and justice in the society, in the larger interest of the country and the mankind. Organisations can also be formed in addition to them in order to tread a collective path.
- 86.6 Muslims should prefer to settle down in such areas where they could uphold their religious identity. A system of education ought to be established which would protect and uphold the spirit and identity of their religious as well as *Milli* character.
- 86.7 There are certain obligations in Islam towards the non-Muslim neighbours as well as the related

ones. Therefore, it enjoins upon the Muslims to be hospitable towards them, look after them and sympathise with them particularly in situations where they are unwell or sorrowful.

- 86.8 The songs like Vande Matram contain words that have definite connotations with *Shirk*. In other words, there is a clear conception of the Indian land being treated as god. In this respect, it is certainly forbidden and unlawful for Muslims to sing such a kind of songs, from the viewpoint of Shariah. It is also obligatory upon them to refrain from it.
- 86.9 In case certain judgements are made in favour of any Muslim on the basis of established non-Islamic law of evidence or some other such laws, which are not in consonance with the tenets of Shariah, then it is not permissible for him to take advantage of them whatsoever. This Seminar appeals to all the Muslims to seek the help of Dar-ul-Qaza itself for resolution of their conflicts or disputes. They should also abide by the decisions or judgements taken up by it and take a subsequent course of action in accordance with the judgements passed. Further, this system holds more relevance because, with respect to certain cases, the judgement of a Muslim Qazi only stands appropriate and justified from the point of Shariah.
- 86.10 The concept of "Unity or Similarity of religions" is absolutely un-Islamic. It is also in stark contradiction with the principles enshrined in the Holy Quran as well as the *Sunnah* besides being

highly unrealistic and non-beneficial from the practical viewpoint. Putting it frankly, it is nothing but a sinister attempt to malign and destroy the identity of Islam. It is also a malevolent stratagem or conspiracy to detract Muslims from the straight path. Therefore, the Muslim ought to realise it and eschew from this evil concept.

- 86.11 Islam has due respect for the humanity. Therefore, it is a moral and religious obligation upon the Muslims to help their oppressed non-Muslim counterparts on the ground of humanitarian values, as far as possible.
- 86.12 As far as the welfare institutions run by Muslims such as hospitals, etc. are concerned, there ought not to be any distinction in rendering their selfless services towards any religion or community. This itself is the core objective of human welfare and Islamic teachings, although it should be kept in mind that the *Zakāt* amount is spent on deserving Muslims only.
- 86.13 It is the underlying primary message of Islamic teachings that the Muslim organisations should sympathise and show compassion towards the fellow countrymen, especially in catastrophic circumstances such as natural calamities or accidents. Rehabilitation tasks should be undertaken without any discrimination.

Islam and the World Peace ♦

The word 'Islam' itself denotes peace and tranquility, however, due to confusion and negative approach adopted by the general media against Islam, its very basic objective to establish peace and harmony in society has become blurred. Therefore, the theologians have reasserted in their Fourteenth Seminar the role of Islam in upholding the world peace. The following instructions were made in the Seminar.

- 87.1 Each and every such act of violence which aims at inducing fear or danger in any individual or community without any valid reason or which puts his life, property, honour and dignity, country, religion and faith at stake, can be termed as Terrorism. It is immaterial whether any individual, organisation or government perpetrates this act, as such.
- 87.2 Any such activity or action taken by the State or Government or authority which makes any individual or organisation bereft of its fundamental rights or which harms it in some way or the other, is also nothing short of Terrorism.
- 87.3 It is the basic right of the victim or oppressed person to raise his voice against any kind of injustice, through effective and appropriate means.

♦ 14th Fiqhi Seminar (Hyderabad – A.P) 20-22 June 2004.

The defense by the victim against oppression or tyranny cannot be termed as Terrorism.

- 87.4 It is not permissible to seek vengeance from an innocent person belonging to the group, which is supposedly responsible for oppression and tyranny.
- 87.5 The possible solution to the menace of terrorism is to provide fairness and justice to all the people in an effective manner, to ensure complete respect for human rights, safeguard and protection of life and property and to provide due opportunity to all human beings to lead a life with honour and dignity, irrespective of any radical, religious, caste-based or gender distinctions.
- 87.6 In the event of any attack on the life, property and dignity of any individual, one has the full right to defend himself.

Declaration of Islamic Brotherhood and the Solidarity of *Ummah*♦

The Tenth Fiqh Seminar was held under the aegis of the Islamic Fiqh Academy (India) at the *Hajj* House (Mumbai) from the 24- 27 Oct. 1999 A.D, in which the scholars, academicians and Islamic jurists from all over the country participated with great enthusiasm, deliberated on the issue very sympathetically and voiced the following declaration of Islamic brotherhood wholeheartedly and solicitously:

“Today, the Muslims of India are entrapped by newer issues every now and then. The most pertinent amongst them is the challenge to uphold their religious faith and their cultural identity in the most hostile atmosphere brewing up in India and to transfer this spirit into our next generations as well. To be precise, this mammoth task has to be carried out by all of us together so that Islam may prosper again on this land, so that its fragrance may spread all around captivating one and all. Moreover, our endeavors should certainly aim at benefiting our fellow countrymen with our humble existence.

“Gauging the gravity of the task, our first and foremost essay should be to raise ourselves above the man-made

♦ 10th Fiqhi Seminar (Hajj House – Mumbai) 24th to 27th of October 1997.

barriers of caste, creed, race and colour, keeping aloof the differences on the basis of schools of thought and disciplines and hold on to the Almighty's rope firmly. Race, colour, language and region - these devilish things, which have disintegrated us and built walls between man and man, ought to be castled off. We should try and explain it to the people that in real sense, unity and integrity alone are synonymous with life whereas hate and disintegrity are nothing but signs of death. However, ironically enough, it has been noticed that over the years, the Indian Muslims are quitting the path of life (unity and integrity) and fast embracing death (hate and disintegrity), which has far more dangerous implications on our religious, *Milli* and Islamic life than it sounds. In this regard, the Fiqhi Majlis of one of the most reputed and dignified organisations of the world, the World Muslim League in its convention held on 24-27 Safar 1408 Hijra, sincerely appealed to the Muslims all over the globe to unite and integrate themselves, further urging them to remain balanced and temperate in the wake of differences pertaining to Fiqh and the schools of thought. They were also solicited not to hurl torrents on others and break each other's hearts.

“At this juncture let us recapitulate once again that we are the slaves of Allah. We believe that Prophet Muhammad (peace be upon him) was the last Prophet and Messenger of Allah. We further regard the Qur'an as the final revealed word of the Almighty. When we offer our prayers, we tend to face in the direction of the *Kaaba*, which we assume as our *Qiblah*. Our religion is Islam, which Allah has favoured until the Doomsday (*Qiyāmat*). Moreover, we have embraced Islam for our salvation.

“Henceforth we pledge that:

- 88.1 We the Muslims would remain united irrespective of the differences in caste, creed, race, sect or schools of thought. In addition to this, we shall practice Islamic unity and brotherhood in our daily practical lives too.
- 88.2 We shall always restrict our differences on schools of thought to the scholarly levels only and shall never allow them to penetrate and affect the Unity of Ummah.
- 88.3 We shall always give the utmost respect to the *Imāms* (towering jurists of the classical age) and renowned figures of each other, abstaining from mouthing torrents which would lower down their prestige and honour.
- 88.4 Above all, we should respect each other as well. Neither shall we indulge in sacrilege nor vexing anybody. We shall also take care of each other’s life, property, honor and status.
- 88.5 We should also cooperate with each other in virtuous and righteous deeds. We must restrain ourselves from casting aspirations, journalistic bashings and launching vilification campaigns against each other. Moreover, our lives should portray the fact that we are each other’s friends, not foes.

- 88.6 We should sort out our differences and disputes with an open mind through amicable talks. Such matters, if any, should be presented before the Shariah courts whosoever.
- 88.7 We must show patience and endurance coupled with tolerance and forbearance in our collective life as well.
- 88.8 Raising ourselves above the impediments of caste, creed and race, we should always endeavor to strengthen our social fabric and harmonious co-existence. Further, we must express the ultimate truth that the standards of greatness before Allah are based upon nothing but abstinence and piety.
- 88.9 We pledge that we shall never undermine the credentials or foundations of our religion and faith on the parameters of our minor differences. And, we shall cling to each other like bricks in a building, standing cemented with each other in our collective and *Milli* life.
- 88.10 Apparently, certain communal elements and forces of political exploitation are trying desperately to segregate and divide Muslims on one pretext or the other, according to the pre-conceived systematic plans. We Muslims should foil and defuse all such plans and conspiracies by way of the wisdom and sagacity characterised by a true Muslim."

The Intellectual Growth of Students of *Madāris*♦

It is of common observance that in the institutions of religious education (*Madāris*), generally speaking, the process of ideological development is not found not on the right track. The educative process, to impart students of these institutions with the skill and ability to appropriately deal not only with the interschool differences but also with the treasure of modern knowledge needed wise treatment. Therefore, in the Fifth Seminar the issue was debated and the seminarians had appealed to the management of Arabic Madrasas that:

- 89.1 The ideological growth of students of *Madāris* should be held to promote among the students the capability to correlate the principles of Shariah with modern conditions and to acquaint them with present problems and also the problems coming for consideration before the Fiqh and other contemporary problems. The Islamic Fiqh Academy, on its part, offers to request any of the prominent theologians to participate and cooperate in such debates, if so desired.
- 89.2 This Seminar thinks it also desirable for the Islamic Madrasas to arrange for periodic lectures by experts on economics and other modern sciences

♦ 5th Fiqhi Seminar (Jamiatur Rashad – Azamgarh U.P) 30 Oct, 2 Nov 1992.

so that the students may be able to acquire an elementary knowledge of these sciences and become able to correlate them with the principles of Shariah. The Islamic Fiqh Academy offers its cooperation in this regard.

- 89.3 The Seminar thinks it necessary that the students and scholars from educational institutions of modern sciences be invited to workshops and camps for imparting them the basic knowledge of fundamentals of Islam, the basic principles and history of Islamic laws and for increasing their capability to provide guidance in every age, and of the necessary terminology. The Seminar calls upon the Islamic Fiqh Academy to take necessary steps in this regard.

Ecological conservation ♦

Allah Almighty has created this world to be inhabited by human being. He has also created conditions conducive to make it comfortable. But some of these things cause pollution. The Lord of this universe has also created means that work to dissolve the pollution and save human kind from the injurious effects of this pollution through this process. After dissolution these elements cause improvement to the natural system of this universe. There is no doubt that the industrial revolution has provided ample comforts of life to humankind but at the same time it has causes extra ordinary air, water and sound pollution. It has affected the equilibration of weather. All sort of diseases have cropped up. The scientists are of the view that if it was not controlled the consequences will be disasterous for the humanity. The science has also suggested the ways to absorb the elements of pollution. But to get maximum production through minimum expenditures the industrialists are not making use of it. It is some thing despicable in term of Islamic and humanistic values.

The following resolutions are adopted in this perspective:

90.1 It is incumbent upon the industrialists that if they

♦ 17th Fiqhi Seminar (Burhanpur – M.P) 5-7 April 2008

go for an industry that causes pollution they must use the means that could dissolve the pollution, to avoid detriment to the environment and there by save humanity from the adverse effects of pollution.

90.2 The advent of multinational companies no doubt, is advantageous from some aspects as there is competition in the market and consumers get better quality products but these industries have brought along with them the industrial wastage and various kind of pollutions. This seminar therefore demands the govt. of India that all the companies whether national or multinational must be made liable to abide by the laws enacted to keep the environment pollution free.

90.3 The dangers the world is faced with due to environmental pollution are mostly from the developed countries. To earn more and more profit and to get cheapest products, they did not care to make their industries environment friendly, nor did they use the means to dissolve pollution, so much so that now when the pollution has become a formidable threat, they are unwilling to own their responsibility. This seminar urges them to be alive to their responsibilities towards humanity and appeals to the government of India that being the largest democracy of the world and a major world power it should try to make the developed countries to shoulder their responsibilities.

90.4 All the country men are also urged to keep their

environment pollution free. They must avoid to do anything that cause pollution in their localities and is vexatious to others such as to answer the call of nature in the open, to make open drains out of ones house, to throw dirt or filth in the stored clean water, etc. It will save the society from dangerous diseases and other detriment.

Glossary of the Arabic Words

Aadat, in lexicon, means the occurrence of something. Terminologically, it covers such things, which, without any rational relationship, occur so repeatedly that observance of the same becomes as common as of something natural.

Aamir means the one who orders. The word is used in the terminology of *Hajj* (Pilgrimage) to denote a person upon whom performance of *Hajj* has become obligatory but he is unable to perform it due to some unavoidable reason and sends someone else instead to perform *Hajj-e-Badal* (pilgrimage by replacement).

Afzal act is an act superior to other acts. In the Islamic terminology, a highly recommended act having superiority on other similar acts.

Ahadith (see *Hadith*)

Ahli Kitab, that is People of Book, are the followers of any of the revealed books mentioned by the Qur'an, commonly understood to be the Jews, the Christians and the Sabians.

Amr-bi-al-M'aruf means commanding what is obvious, is an essential obligation in Islam, which makes it essential for the Believers to order, command, or prescribe what is commonly understood to be good for mankind. It is opposite of spreading things harmful for human beings. The beliefs, customs, rituals, etiquettes, common practices, etc. falling under the category of

'permitted things' by Islam comprise *Amr bil M'aruf* whether they have been mentioned in the Qur'an and the Traditions of the Prophet (peace be upon him) or not. They signify the principle of Islam to accept all valid things that exist in society, whether they are the age-old rituals, local customs and practices or things that have base in the common and logical thinking of human beings and thereby remain unchanged for epochs in spite of religious or ideological upheavals.

Awqaf, the plural of *Waqf* (endowment), comprises immovable property or properties and corpus funds donated/established by someone and the return or profit of which is earmarked for public welfare under specified or unspecified heads.

Ayat (pl. *Ayaat*), meaning a divine sign, is specifically used to indicate a Verse of the Qur'an. It is also used to point out Signs of Allah spread in Nature.

Badna (big animal) is a sacrificial animal, slaughtered on the occasion of *Hajj* as retribution to any act, which could affect sanctity of the pilgrimage.

Bai Salam (advance deal) is a method of business transaction in which the seller receives entire amount of the sold thing in advance and he transfers the sold thing to the buyer after receiving the selling price. The term is used in the context of *Zakat* for fixing the responsibility of paying it on the seller.

Bai-bit-Taqseet (sell on installments) is a way of business deal whereby the seller sells his product to the buyer on installments; the product is transferred to the buyer but

its agreed price is taken in parts in a periodical duration. The price of the product charged over an above the normal one becomes a matter of controversy in the Islamic circles whether this increased price would be regarded as *Riba* (interest) or not. It is generally permitted to buy products on higher price if the payment is to be made in installments.

Bai Istasna (sell on consideration amount) stands for a kind of sell in which a significant amount is paid by the buyer to the seller in anticipation of delivery on due date. In the Islamic jurisprudence, the problem arises that for the calculation of *Zakat*, whether this amount would make part of the *Nisab* of the seller or the buyer? And, the general view is that *Zakat* will become obligatory on this amount on the seller and not on the buyer, if the other conditions of *Nisab* occur.

Baitul Mal, literally the House of Money, denotes to the Islamic institution of public money, in which money is collected from wealthy and spent on the welfare of destitute or common people. It may be run by the state or by the welfare organisations.

Dafe-e-Zarar (removal of harm) is a very important term of the Islamic jurisprudence, which is used in the formulations leading to removal of any sort of harm inflicted on human beings due to a special situation and thus justifying amendment in the command of Shariah.

Dam-e-Shukr is a term used in the terminology related to *Hajj* and points out to the sacrifice of an animal by a pilgrim on completion of *Hajj*.

Farz (obligatory responsibility) is the kind of an act, which is obligatory to be performed due to the Islamic injunctions and its renunciation on any invalid pretext would make a person sinner and its performance would remain due until it is done some time later.

Fasiq is a Muslim who does not perform his religious duties and cares a damn about them.

Fatwa (edict) is a juristic proclamation on the matter involving confusion regarding the right course of action according to the injunctions of Islam and that has been referred to an expert called *Mufti* for opinion and guidance. The institution, which deals with matters referred to it for an Islamic opinion and for the announcement of Edicts for the guidance of people, is called as *Ifta* or *Dar al-Ifta*.

Fi Sabilillah, literally 'In the Way of Allah', is an act done solely for seeking the Pleasure of Allah and not for any temporal motive. In connection with the payment of *Zakat*, this term denotes to one of the eight heads on which *Zakat* could be spent. It is debated that the term comprises contribution only for the warriors or it has general connotation to include all acts leading to upholding the faith.

Ghair Mansoos, see *Mansoos*

Ghair Rajih, see *Rajih*

Hajat is a juristic term used to refer 'Want' and 'Necessity' both are basically related to toil and labour. To a certain degree toil is obligatory in all precepts of

Shariah and it cannot be used in any change of the precepts. Sometimes the toil is comparatively less severe but in comparison to the toil made obligatory by Shariah for the human beings it is of extraordinary nature. This state is 'Want'. Hence, the basic difference between 'Want' and 'Necessity' is only the fluctuation of labour. If 'Want' is not of prohibitive nature it can have the room of exemption only in such orders, which are not prohibitive in themselves but for the remedy and prohibition of other forbidden things.

Hajj (pilgrimage) involves one of the cardinal acts of Islam, in which a capable believer has to perform pilgrimage of the Holy Mosque of Makkah and the nearby sacred places. This is done on the fixed dates of the eleventh month of the Islamic calendar, that is on 8-10 Zil Hijja. The essential rituals on the occasion of *Hajj* include wearing of Ihram; circumference of Kabah; visit of Muzdalifa, Meena and Arafat; shaving of hair (*Halaq*), pelting on *Zumrat* and sacrifice of an animal. There are various kinds of *Hajj* such as *Hajj-e-Afrad*, *Hajj-e-Badal*, *Hajj-e-Tamattu*, etc. depending the nature of pilgrim and his circumstances.

Halal (permitted) act, thing, ritual, belief, etc. in Islam is the one that has been allowed either in the prime and categorical sources of the Faith such as the Qur'an and *Sunnah* or those which have been derived from these sources by the authentic experts and scholars.

Halaq (shaving of the scalp) is a ritual that involves shaving of scalp hair by the male pilgrim or cutting of a small bunch of hair of female pilgrim on completion of all other rituals of *Hajj* and is a sort of declaration that *Hajj* or *Umrah* gets completed.

Haram (prohibited) act, thing, ritual, belief, etc. in Islam is the one that has not been permitted either in the prime and categorical sources of the Faith such as the Qur'an and *Sunnah* or those which have been declared so by the authentic experts and scholars while deriving their opinions according to these sources.

Haram-ba-ain-ehi is a degree of seriousness of the prohibition, which denotes that the prohibited act, thing, ritual, belief, etc. is in itself *Haram*.

Hasan li-Ghairihi is the category of the *Hadith* whose narrators are not accused of being liars and *Fasiqs* but happen to be persons with a weak memory and which could be strengthened by examining them in various ways, provided that the narrator in the other *Isnad*, is also accused of having a weak memory only and not of being a liar and a *Fasiq*.

Ibadat (worship) is key to Islam and covers every act, ritual and belief prescribed in the Faith as worship of the One and Only God Allah the Almighty. It includes the prayers, fasting, charity and pilgrimage on the one hand and on the other hand obedience in all affairs of Islam.

Iddat is a probationary period which a widow or a just divorced woman has to spend in isolation for three months and ten days to ascertain whether she is conceived from her ended marriage or not.

Ifta, see *Fatwa*

Ihram is the prescribed uniform of the pilgrim to be put

on for the performance of *Hajj*. It consists of two pieces of unstitched clothe in case of man and the normal Islamic dress in case of woman.

Ijarah is the term used in trade and commerce to denote that the business or any deal has a proprietary right of some one.

Ijma denotes to the consensus among the classical experts of theology on a matter of vital importance.

Ijtihad is a process by which Islamic injunctions regarding new and contemporary issues are derived in the light of the categorical sources of Islam (*Nusus*) or by referring to previously existing opinion of the classical or other authentic experts of Islamic jurisprudence.

Isnad is the method of accepting authenticity of narrators of the *Ahadith*.

Ittihad-e-Majlis is a technical term used to denote that an agreement, contract, deal or understanding appertained to business or otherwise has culminated between two parties in one session, sitting or discussion and before the separation of the concerning parties. If the concerning parties sit together again thereafter, then it would be regarded in the Islamic jurisprudence as another or new Assembly and the agreement reached upon in this sitting will only be valid and the agreement of the first session shall be void.

Izterar points out to a hardship and unbearable condition facing an individual or any group of individuals making it quite difficult to remain abide an Islamic injunction and although the believers are striving hard to follow the injunction in spite of the cumbersome situation, they

expect some relaxation in it due to the said situation.

Jahez is originally the things, which a bridegroom makes ready to start his life with the bride to whom he is going to marry including household things and things of comfort and ease for the bride. This form of dowry has been appreciable in the classical age of Islam. However, due to alien influence the same word is now being used to denote the contrary that is the household things and things of comfort and ease for the bride given on demand or under social pressure or voluntarily by the family of the bride at the time of her marriage. This form of prevailing dowry is not acceptable under the Islamic jurisprudence.

Jaiz refers to something Islamically permissible to do, believe or consider.

Jawaz (having justification) is a term which apart from its general juridical meaning is used in the *Hajj* terminology defining the proper period in which a person incapable of going and performing *Rami* due to a milling crowd during the rainy season, as prescribed by the Prophet (pbuh) he/she can perform the same even after that season or even in the *Karahat* (abomination) period if there is some serious problem. Evidently, it would not be unbecoming of and abominable at all for him/her.

Jihad is an utmost struggle waged by the Muslims to save or propagate their religion. This does not necessarily refer to an armed struggle, which is commonly misunderstood.

Jumarat points to the three places in Meena, now symbolised by three pillars, where Satan tried to distract

reverend Ishmael to disobey his father the grand prophet Abraham who was taking him to sacrifice in the name of God and it has become since then an essential ritual for the pilgrims to throw three pebbles on each of them during *Hajj* in reprehension of the devilish act.

Karahat, see *Jawaz*

Khiraj is the land revenue charged by the Islamic or any other government on the measurement of the land rather on the quantity of the produce.

Kufu is the term in Islamic sociology and jurisprudence in connection with the institution of marriage and denotes to social, educational, economic and religious equality of the bride and bridegroom and their families.

Mal-e-Haram is the money earned, accumulated or accrued from illegal and invalid means.

Masaleh is the valid and justified interest of people or individuals on the basis of which juridical judgements could be revised.

Meeqat is the boundary line from which it becomes obligatory for a pilgrim to put on *Ihram* and formally commence *Hajj*.

Mansoos signifies the provisions of guidance in Shariah which are of two kinds: *Mansoos* (specified) and *Ghair Mansoos* (unspecified). The specified provisions of Shariah are its those precepts which have been indubitably mentioned in the Qur'an and the *Sunnah* while the unspecified provisions are the ones which are

related to the deduction and the Interpretation (*Ijtihad*) of the eminent jurists of the *Ummah*.

Mehr is the amount given or promised in cash or in the form of gold or silver by the groom to the bride at the time of marriage as the marriage gift.

Mubah act, thing, ritual, belief, etc. is the one which is permitted by Islam but does not enjoy the degree or level of appreciation.

Muhaddith (pl. *Muhadditheen*) is an expert on the science of *Hadith*, the one who vet validity and the context of *Ahadith* and make derivation of various principles for an Islamic life.

Muhassar-anil-Hajj is a person who is restrained from performing *Hajj*.

Mujtahid is the Islamic scholar who applies his expertise in the Qur'an, *Sunnah* (Traditions of the Last Prophet), *Ijma* (Consensus) and *Qayyas* (Analogy); and derives appropriate principles for new situations while interpreting them on the basis of these four sources of Islamic jurisprudence.

Muqem is an adjective, which denotes that the person in question resides locally, technically at least for more than 14 days. The term is used while prescribing certain principles and norms for those who are in journey contrary to those who are locals.

Murabaha is a term used in trade and commerce to denote mark up pricing in sale and purchase.

Musharakah is the term used in trade and commerce to

dente that the business or any deal in the form of partnership, joint venture or by any other instrument has been taken up while sharing the lost and profit out of it.

Mustahab act, thing, ritual, belief, etc. is the one, which is better than *Mubah* in the degree of validity in Islam and thus considered appreciable.

Mutawalli is the caretaker of a *Waqf* property, the one who has either created the endowment himself or inherited it or has been appointed so by some competent authority.

Muzarabah is the term used in trade and commerce to denote that the business or any deal has been run in such a way that one or more partners are no sleeping partners and other partner or partners one active partners in the business.

Nafs is the term, as used in the Islamic jurisprudence, denotes to a living person having right to live.

Nas (pl. *Nusus*) denotes to a categorical injunction of the Qur'an and *Sunnah*, prime sources of Islam, the denial of which has been considered a sin and the one that does not depend upon any secondary derivation or *Ijma*.

Nikah is the contract between the bride and groom to live together according to the tenets of Islam and to fulfill due rights of each other and to act according to the agreed terms of the nuptial bond.

Nisab refers to the slab of saving or wealth in calculating *Zakat*. Presently, it is Rs 14,000, or 85gm or gold or 650gm

of silver, that has existed in one's possession for the last one year.

Nusus, see *Nas*

Qasr denotes to the relaxation in offering prayers during journey time involving minimum distance of the journey (19 km according one opinion or 75km according to the other) for maximum days of the journey (outstation stay is less than 15 days) or the prayers offered by the pilgrims during the *Hajj* time; in which the four units (*Rakah*) of Zuhur, Asr and Isha prayers becomes half.

Qiyas, analogy, is a method in Islamic jurisprudence for deriving principles by comparing a categorical injunction with the new situation and thereby reaching to a judgement to be followed in the comparatively similar situation based on the previous instance.

Rafa-e-Harz, that is elimination of difficulty, denotes in the Islamic jurisprudence to the removal of the difficulty faced by people due to changed circumstances or otherwise in the context of following an Islamic injunction, by the process of *Ijtihad*.

Rajih act, thing, ritual, belief, etc. is the one, which stands correct and acceptable according to the precepts of Islam.

Rami is the act of ritualistic pelting of stones on *Jumarat* as a part of *Hajj*.

Riba (interest) is a very important term in the Islamic terminology showing disapproval and it refers to the instrument by which a loaner charges some amount lump

sum or in installments over and above his principal amount from the loanee and thus increases his wealth manifold without participating in the business process of profit and loss.

Sadaqah (pl. *Sadaqat*) is a voluntary spending in the way of Islam and for charitable purposes, contrary to *Zakat*, which is obligatory. However the act is regarded appreciable. In certain cases *Sadaqah* becomes compulsory at one's being a part of atonement or penalty caused by some religious mistake. Hence, the term *Sadaqt-e-Nafela* (voluntary charity) is also used to show that the act is entirely own discretion.

Sahaba (sing. *Sahabi*) are the Companions of the Prophet Muhammad (peace be upon him) who personally saw him or lived with him in the state of Islam and followed him till death.

Sahibain is a term of Islamic jurisprudence, which refers to the two great jurists of their time who were the immediate disciples of the great Imam Abu Hanifa, namely Imam Mohammad and Imam Yousuf.

Sadaqat-e-Nafela, see *Sadaqah*.

Shariah is the Islamic Law, Creed and Code of Conduct as derived from the two categorical sources of Islam (*Nusus*) and from the principles lead down in the Islamic jurisprudence. Some times *Shariah* denotes to all the religious laws revealed in different ages and hence the term Islamic *Shariah* is used to distinguish them from the Islamic Law.

Sunnah according to the Arabic lexicon means the way and it denotes in the Islamic terminology to the Way of the Prophet Muhammad (peace be upon him), including all his commands, sayings, acts, etc. and direct or indirect approval or denial of an act or belief.

Tamattu is a kind of *Hajj*, which denotes to the absoluteness of the ritual.

Tasmia is a set of words constantly chanted loudly by a pilgrim leading towards *Kabah* during *Hajj* or *Umrah*, starting at the beginning of the *Hajj* or *Umrah* just after putting on *Ihram* and stopping at the first sight of *Kabah*. The set of words used in *Tasmia* are “*Labaik allahuma labaik, la sharika lak labbaik...*”(I am present O Lord! I am present!! There is no equal to You O Lord! I am present....”

Tawaf-e-Ziyarah is a term used in the context of *Hajj*. *Tawaf* denotes to the set of seven circumferences of *Kabah*.

Talaq-e-Sakran is the divorce given by a husband to his wife in the state of intoxication.

Talaqqa-bil-Qubool is the category of authenticity of a *Hadith* in which it is quoted by several renowned jurists as a proof or they have suggested to act upon it or going further they have interpreted its text in some other way and decided a meaning other than the apparent meaning instead of rejecting it, then it is called *Talaqqa-bil-Qubool* (received by acceptance).

Ulema is the plural of *Aalim* (knowledgeable), which means more than one theologian of Islam or those who

have studied Islam and its implications in a systematic manner from authentic institutions.

Umrah is the ritualistic visit of the Holy Mosque of Makkah during the period other than *Hajj* days and do all the rituals of *Hajj* other than visiting places outside Makkah and doing rituals essential over them. Thus, *Umrah* includes wearing of *Ihram*, chanting of *Talbia*, *Tawaf*, *Sae* and *Halaq*.

Urf (pl. *M'aruf*) has the meaning in lexicon as 'commonly known' and in the Islamic terminology it refers to the attitude, belief, custom and practice which is universally accepted as right and followed by people without attaching any particular religious sanction on it.

Ushr is a kind of tax levied on the produce from agriculture, which is one-tenth of the harvest if watered by rains and its one-twentieth if the land has been irrigated to grow the crop.

Wajib is an act, thing or belief, which is just second to *Fardh* in the degree of its importance.

Wali according to Shariah is the Guardian of a boy or a girl having right to supervise his/her sustenance, upbringing and marriage and he ought to bear these qualities: Mental soundness, maturity of age, independent status, having right in inheritance, and should be a Muslim. The order of guardians would be similar to that of the paternal relationships in inheritance.

Waqf, see *Awqaf*.

Waqf ala al-Aulad denotes to the endowment in which the future supervision and benefits will go to once progeny.

Waqfnama is the document declaring institution of an endowment and its terms and conditions. And, *Waqif* is a person who do so.

Wasq happens to be the traditional unit of weight prevalent during the classical times of Arabia, measuring equivalent to 653 kilogram of the present time.

Zabiha is the Islamically slaughtered animal.

Zakat is among the five pillars of Islam and denotes to an essential obligation of charity on wealthy persons of society, wherein they have to donate fortieth part of their annual savings on the prescribed heads if they have in their possession a certain amount of gold, silver, cash or the equivalent thereof denoting to the slab of *Zakat* called *Nisab*.

Zaroorat is a juristic term used to refer 'Necessity'. To a certain degree toil is obligatory in all precepts of Shariah and it cannot be used if there is any change of the precepts. Sometimes the toil becomes so rigorous that if no leniency is made, it surely causes grave harm. This stage is called 'Necessity'. The basic difference between 'Want' and 'Necessity' is only the fluctuation of labour. Under 'Necessity' there can be room for exemption from such definite and categorical orders, which are irrevocably prohibited.

Zibah is the process of slaughtering animals in an Islamic way, especially the ones which are intended as the sacrifice.

Zibah Ghair Ikhtiari, see *Zibah Ikhtiari*.

Zibah Ikhtiari is the process, which is in full control of the one who commands it contrary to *Zibah Ghair Ikhtiari*, which is not in one's control. The first type of slaughtering is applicable to the domestic animals whereas in the second type wound is inflicted on any part of the body of the animal which becomes out of control and let the blood flow from the wound. This sort of slaughtering is done on untamed (hunting) wild animals who are not under the control of human beings with the exception that a wild animal may be caught and tamed or is somehow caught alive.

Zina denotes to fornication, forced or otherwise, in which a person or persons enter into an unlawful intercourse.